THE

CASE

OF

Exeter-Colledge,

IN THE

UNIVERSITY

OF

OXFORD.

Related and Vindicated.

By Joseph Washington.

LONDON;

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TO THE

READER.

THE late Proceedings of the Biſhop of Exeter, as Viſitor of Exeter-Colledge in Oxford, were ſo directly contrary both to the Statutes of the Colledge, and the Laws of this Realm, that the Rector and Fellows, who oppoſed his Lordſhip therein, little thought there would have been any cauſe to publiſh a Vindication of their conduct in that Affair, eſpecially when they found that his Lordſhip had no other grounds for his Porceedings, then what have been publiſh't in a late Pamphlet, Entitled An Account of the Proceedings of the Right Reverend Father in God Jonathan &c. It was hoped the weakneſs of that Pamphlet would be obvious to all judicious and intelligent Readers; and that the badneſs of his cauſe was ſufficiently detected by the weakneſs of his defence.

But ſince it appears that ſome perſons, who know no better, or are willing to be deceiv'd, are impos'd upon either by the Biſhop's Character, or the credit of two Civilians, and perhaps ſome bold daſhes in the late Pamphlet (as Greatneſs and Reputation are apt to give a colour to things, that in themſelves have none) They began to conceive it might not be improper to let the unthinking part of their adverſaries underſtand, that they had much more to alledge in their own Vindication, then had been ſaid to run them down. Yet was this deſign retarded, becauſe one part of their Cauſe, to wit the Viſitor's Power as Ordinary, was in conteſt betwixt him and the Rector in the Court of King's Bench. But that having been ſince decided in favour of the Rector, its hoped the judgement of the Court upon that part of the Cauſe may facilitate the belief that the reſt of his Lordſhips Proceedings have been all of a piece with that.

The deſign of the enſuing diſcourſe, is to ſatisfie all that are concern'd, or will concern themſelves in this Controverſie, that there was juſt cauſe for Mr. Colmer's firſt and ſecond Expulſion; that

his Appeal to the Visitor, was not only not warranted by, but directly against the very letter of the Statutes of the Colledge, *that Dr.* Master's *his executing a Commission from the Bishop, was a Visitation, within the intention of the Statutes, and that the Visitor has no Episcopal jurisdiction over the* Colledge *or any of its Members. Which particulars, if they be cleared, we are not concern'd to give a superfluous answer to little and insignificant suggestions that trench nothing at all on the merits of the Cause. The Author of the Account has that province left entirely to himself, of urging immaterial passages, and misrepresenting them too; Our design is peace, which to obtain, all expressions of rancour and harsh reflexions are abstained from, nor is any thing here set down, but what tends to the justification of the* Colledge *in point of Right: Even the displaying of Mr.* Colmer's *personal guilt had been forborn, had it not given the first rise to the present disorders, and if his own obstinacy had not put his Judges upon a necessity of vindicating the Justice of their Sentence.*

But the main stress of this whole Affair centring in the Visitor's Jurisdiction, the Rector *and* Fellows *are heartily sorry, that his Lordship did not meet with a more creditable occasion of asserting his pretended Jurisdiction, then that, which does in the nature of the thing (tho not in his Lordships intentions) tend to the encouragement of Vice and Debauchery, and that in a Society instituted to be a Seminary of Learning and Vertue.*

And they cannot but take notice, because they hope it will make an impression in favour of them upon unprejudiced minds, in what manner the illegality of his Lordships proceedings is backt by those who abett him; to wit, with force and violence, riots and disturbances even at the performance of God's publick Worship, the particulars whereof are not thought fit to be here inserted. A good Cause is always best maintain'd by proper and legal methods; whereas passion and force are generally signs of a bad cause as well as of ill men.

The

The CASE *of* Exeter-Colledge, *in the Univerſity of* Oxford, *Related and Vindicated.*

WIthin the compaſs of three quarters of a year two Baſtard Children were born of young Women then in the Service of *Bed-makers* belonging to *Exeter-Colledge*. One *Anne Aris* appeared to be with Child about *Mich.* 1688. and towards the latter end of the next Summer, one *Anne Sparrow* was in the ſame condition.

The *Rector*, and *Senior Fellows* thought (as well they might) that it highly behoved them for the Reputation of the *Colledge* to endeavour the wiping off ſuch a *double ſcandal*. Which could no otherwiſe be done then by a diſcovery who were the true Fathers of the ſaid Baſtard-children; and if upon Examination, and Proof, it ſhould appear that any Member of the *Colledge* had been faulty therein, then to proceed againſt ſuch Member, as the Statutes of the *Colledge* direct.

Upon enquiring into the matter there appear'd violent preſumptions of Mr. *Colmer's* Guilt.

As *Firſt*, *Anne Sparrow* confeſſtoh er Dame *Thomaſin Smith* (who was Mr. *Colmer's* Bed-maker) that Mr. *Colmer* was the Father of her Child.

Secondly, *Thomaſin Smith* confeſt, that after the ſaid *Anne Sparrow* was diſabled from working, Mr. *Colmer* was at the charge of maintaining her.

Theſe two particulars, the ſaid *Thomaſin Smith* diſcloſed upon her Examination before the *Rector*.

Thirdly, *Ferdinand Smith*, *Thomaſin's* husband, being Examined by the *Rector*, ſaid that the Father of one of the Children was Father of both, but refuſed to confeſs who that was, or from whom he had money for keeping *Anne Sparrow*, becauſe a Gentleman (he ſaid) would be expell'd, and he ſhould loſe his Friends.

Fourthly, The other young woman *Anne Aris* had laid her Child to the ſaid *Ferdinand Smith*, who Fled into the *Weſt*, and was

furnished with money by Mr. *Colmer* for his Journey; by whom about three months after he was taken into his Service and brought back to the *Colledge*.

Fifthly, *Ferdinand Smith* gave bond to the Overseers of the Poor to save the Parish harmless, penalty 40. *l.* One of the Overseers, being *Cook* to the *Colledge*, and charged by the *Rector* for unfaithfulness in his Office in *taking bond of a* man that was not solvent, replied that he should not have taken it, if he had not been bid to do it by a Gentleman, who promised the Parish should come to no damage: This Gentleman upon farther Examination appear'd to be Mr. *Colmer*, who afterwards did not deny it.

Sixthly, Presently after *Anne Sparrow's* delivery, *viz.* about a weeks end, it being nois'd about that Mr. *Colmer* was the Father, she was removed and hid by Mr. *Colmer*, or by some of his friends; which upon his own Examination before the *Rector* he could not deny.

Seventhly, The then *Vice Chancellor*, now Lord Bishop of *Bristol*, being applyed to by the *Rector* to Examine *Ferdinand Smith* as a Justice upon the whole matter, in order to the finding out the truth; *Ferdinand Smith* confessed to him that the Girle had named Mr. *Colmer* for the Father.

Eightbly, The Midwife being sent for, gave this Account, that when she prest *Anne Sparrow* at the time of her travail to name the true Father, *Thomasin Smith* her Dame desired that she would not urge her, saying she had told her already; and *Thomasin*, when afterwards examined by the *Rector*, confest that she had hindred the Midwife's urging a confession at that time, because she was loath to have Mr. *Colmer* disgrac't before the company then present.

These grounds to suspect Mr. *Colmer's* Guilt, the *Rector* thought sufficient for bringing the Matter to a hearing before the *Senior Fellows*; And accordingly fixed a day, giving Mr. *Colmer* notice about a fort-night before, that he might have time to prepare his defence.

The day being come, which was the 10*th.* of *October* 1689. The *Rector* and *Senior Fellows* met together, Mr. *Colmer* being present. And the substance of the Evidence of Mr. *Colmer's* having been guilty of *Incontinence*, and in particular of his being the Father of *Anne Sparrow's* Bastard child, as disclos'd upon a long hearing of several hours, appeared to be as followeth; *viz.*

First, *Anne Sparrow* had acknowledged that Mr. *Colmer* was the

the Father of her Child. That ſhe had ſo acknowledged, was confeſt by *Thomaſin Smith* her Dame then preſent, and her Huſband *Ferdinand* had owned the ſame before the *Vice Choncellor*; as was then atteſted by the *Rectors* Oath.

Note, Ann, Sparrow could not be then produced in perſon, becauſe remov'd out of the way to prevent her diſcloſing the truth; and that by Mr *Colmer's* friends,

Secondly, The Overſeer of the Poor then atteſted, (and has ſince depoſed upon *Oath*) that Mr. *Colmer* bid him take the ſecurity of *Ferdinand Smith*, Scrape-trencher of the *Colledge* for the Child that *Anne Sparrow*, ſingle woman, then went with, and told him the Pariſh ſhould not be damnified.

Thirdly, That *Thomaſin Smith* had acknowledged, that the money for *Anne Sparrow's* maintenance, whileſt ſhe was at *Ferdinand Smith's* houſe, and big with Child, was paid by Mr. *Colmer*.

Fourthly, That by *Ferdinand's* ſaying (as before, and as himſelf acknowledged upon the hearing that he had ſaid, *viz.*) that a Gentleman would be expell'd, it appear'd he had ſome knowledge who was the Father; nor would name any other then Mr. *Colmer*, who might be liable to Expulſion for the ſame, and yet refuſed then to name him, tho' he was told, that unleſs he charged ſome body, what he had ſaid already, joyn'd with what other proofs had been made, would faſten it upon Mr. *Colmer*; whom he had all along favoured in the whole affair. (*Note*, that this *Smith* finding himſelf afterwards laught at for ſome weak tergiverſations and contradictions in what he ſaid at the hearing, has confeſt that by the Gentleman liable to be expell'd, he meant Mr. *Colmer*.)

Fifthly, That *Anne Sparrow* ſome time before ſhe was known to be with Child, was heard to ſay, that ſhe had reaſon to curſe Mr. *Colmer*, for he had undone her. Of this one of the Fellows gave information; to whom it had been told by *Joyce Aris*, who heard the words, and ſhe being called in and Examined, did her ſelf confirm it.

Sixthly, That of the *Midwife* mentioned before.

Seventhly, That tho' Mr. *Colmer* had ſufficient time given him to make his defence, and might have clear'd himſelf in a great meaſure from being guilty in the main charge againſt him, if *Ann Sparrow* had been brought in, and would have acquitted him; yet he forbore (as muſt be preſum'd out of a conſcience of guilt) to bring her forth, as he might eaſily have done; ſhe having been lately removed out of the way by ſome of his friends, as himſelf could not deny. (And, as it has appeared ſince by her own depoſition, ſhe was then but at one *John Wakeland's* houſe in *Oxford*,

whether she had been perswaded to remove by Mr. *Cleveland* and Mr. *Maundrel* both *Fellows* of *Exeter-Colledge*, and intimate friends of Mr. *Colmer*; who likewise paid for her keeping, whilest she was there.)

These Evidences appear'd to the *Rector* and *Fellows* so full and pregnant, that they conceived no rational man could entertain a just doubt of Mr. *Colmer's* crime; and the Caution that was us'd by the *Rector* in making what enquiry he could into the fact, tho' a publick scandal to the whole *Colledge*, before he would bring Mr. *Colmer's* Reputation in question by a publick charge of this nature, is a great argument, how candid the proceedings of the *Colledge* have been in this affair. Yet were not the *Rector* and *Fellows* willing upon the hearing to proceed to a sentence of *Expulsion*, tho upon such violent proofs, as nothing but a positive Testimony upon Oath of the very committing the Act (which in a crime of this nature is very difficult to be had) could be more convincing; without enquiry into Mr. *Colmer's* former behavior and course of Life. Which, if it were innocent and free from imputations of such like immoralities, ought to raise a tenderness in receiving such an accusation, and might perhaps entitle him to insist upon stricter proof, then a man who is known to be of a loose life can reasonably be thought to have a Just claim to.

It was made appear to them by the Attestation of a *Scholar*, that *Anne Aris* had confest to him some rude importunities used to her by Mr. *Colmer*: *Vid. infr. Depos. Lett.* B. And the *Rector's Wife* declared that one *Mary Lawrence* sometime servant to the said *Ferdinand Smith*, had declared to her that Mr. *Colmer* had made some uncivil attempts upon her, when she was making his Bed, insomuch that she was afraid to go into his Room alone; *Vid. Dep. Lett.* C. Other lascivious offers made by Mr. *Colmer* to one *Alice Gigge* were attested at the hearing, by a person who had it from her self. And she has since made *Oath* of it. *Vid. infr. Dep. Lett.* D.

Mr. *Colmer's* Defence consisted of nothing but confident denials of all that was charged and proved, and the Evidence of the two *Fellows* above mentioned, who took their voluntary Oaths, that *Anne Sparrow* had in their hearing clear'd Mr. *Colmer* of having been concern'd with her. But as this Testimony of theirs was not then thought considerable enough to counterpoize so many Evidences of her having confest it to others, backt with so many other circumstances of Mr. *Colmer's* guilt, as have been mentioned

ed and were fully atteſted; eſpecially thoſe two *Fellows* being known to be Mr. *Colmer*'s Intimate Friends, and upon that ſcore ſuſpected to have gain'd ſome words of that kind from her in Mr. *Colmer*'s behalf, ſo it has been made appear ſince by *Anne Sparrow*'s own *Affidavits* made before Juſtices of Peace, that Mr. *Gleaveland* and Mr. *Maundrell*, who were the two *Fellows* that gave this Teſtimony, had adviſ'd her to lay her Child to a Gentleman of *Chriſt-Church*, for that if ſhe laid it to Mr. *Colmer* he would be expell'd, and that it was purſuant to their perſwaſions that ſhe own'd before *Alderman Fyfield*, that another man was the Father. But withal ſhe ſwore that none had ever perſwaded her to lay it to Mr. *Colmer*, who was the true Father, for that no other man but Mr. *Colmer* had ever had carnal knowledg of her, *Vid. infr. Depoſ. lett.* E. & L.

Upon a full hearing of all the Allegations and Proofs on both ſides, the *Rector* and *Fellows* were convinced in their Conſciences of Mr. *Colmer*'s guilt, and proceeded to a ſentence, whereby according to the Statute *De cauſis propter quas Scholar.* &c. they pronounced him *ipſo facto* expell'd.

Mr. *Colmer* reſted to appearance ſatisfied with the Juſtice of his ſentence for ſome time; and deſired of the *Rector* a licenſe under his hand in order to his *Admiſſion* into ſome other *Colledge*; and confeſſed that he had no reaſon to complain of his Judges, for that himſelf upon the like Evidence would have found any other perſon guilty; but he pretended to find fault with the Witneſſes, and laid the whole blame upon them. But he continued not long in this ſubmiſſive mind: A deſign was laid to conteſt the matter again, and clear Mr. *Colmer*'s Innocence.

It has been ſaid that *Anne Sparrow* was removed ſhortly after her lying in to *John Wakeland*'s Houſe in *Oxford*, from thence after ſome Weeks ſtay, ſhe was brought back to *Ferdinand Smith*'s (where ſhe was before, and there a Juſtice of Peace, *Alderman Fyfield*, came to her, being conducted by the aforeſaid Mr. *Maundrell* who had Chriſtened the Child; and examined her concerning the Baſtard-child, that ſhe had had. To him ſhe declared that ſhe had been got with Child by a Gentleman of *Chriſt-Church*; and cleared Mr. *Colmer*. The *Rector* hearing that *Anne Sparrow* had retracted what ſhe had formerly acknowledged to ſo many, went to *Alderman Fyfield* to enquire into the matter: But could receive from him no other Account than this: *viz.* That he had Examined her, but had taken no depoſition; and at what houſe it was he knew

knew not; that she had cleared Mr. *Colmer*, and said she had lain with one of *Christ-Church*, but knew neither his name nor his Chamber.

Now this retractation of her's before *Alderman Fyfield*, as it is the less to be credited, because contrary to what she had frequently declared before, and because she was not upon her Oath for any thing that appears by the *Alderman's Certificate*, so it is to be considered that at the time when *Alderman Fyfield* examined her, she was kept private in *Oxford* by the procurement of Mr. *Colmer's* Friends, who had paid for maintenance since her great Belly disabled her from working, and consequently may well be supposed to have a great influence and design upon her: And further it must be observed that *Alderman Fyfield*, tho he was a Justice of Peace, did not in taking this Examination act as such; he did not send for the Wench before him, but very officiously waited upon her; and at such a house as he knew not how to find again, he took no *Deposition* upon *Oath*, made but a very superficial enquiry after the true Father, took no care to secure the *Parish*, but being Mr. *Colmer's* friends, and their Pupils *Mercer*, was acted apparently by him and his friends to gain an acquittal of Mr. *Colmer* from *Anne Sparrow's* mouth, which should have the credit of being attested before a *Magistrate*; and yet should be ordered in such a manner, as not to be capable of being contradicted.

The next step taken by Mr. *Colmer* and his Managers was to convey *Anne Sparrow* quite away, to prevent her being examined in another manner, than the *Alderman* had done; whereby the truth with respect to Mr. *Colmer* might come out, and the indirect carriage of *Alderman Fyfield* in this matter be made publick. She was therefore conveyed by *John Wakeland*, in whose House she had lodged, to one *Green's* House at *Dorchester* seven miles from *Oxford*; there she made some stay, and discovered the whole matter to *Green* and his Wife, as appears by their *Depos. Lett.* M & *Lett.* N. From *Dorchester* the same *Wakeland*, who had agreed and paid for her Lodging, *&c.* at *Dorchester*, convey'd her to *Farrington*, and from thence to *London*.

The day after she came to *London*, looking out at a Window she spied passing by one of the *Fellows* of *Exeter-Colledge*, and calling to him, gave him an account of all that had passed. Which he imparted to the *Rector* by Letter: And shortly after by the *Rector's* order went to a Justice of Peace in order to have her Examined, but she was removed, and the Woman of the

the Houſe refuſed to tell the Juſtice whither; but being threatned to be ſent to *Bridewell*, confeſt that *Anne Sparrow* was about *Iſlington*, whither ſhe went with the *Conſtable*, and brought her before the *Juſtice of Peace*, before whom the depoſed, That Mr. *Colmer* was the only man that ever had lain with her, and that he was Father of her Child, that after her delivery ſhe was adviſed by Mr: *Cleaveland* and Mr: *Mandrel* to ſay that a Gentleman of *Chriſt-church* was the Father, which by their perſwaſion ſhe did to *Alderman Fyfield*, who was brought to her by Mr. *Maundrel*: that the reaſon which they urged to her to lay her Child to another, was becauſe elſe Mr. *Colmer* would be expell'd: And that no perſon ever perſwaded her to lay her Child to Mr. *Colmer*.

She depoſed likewiſe at the ſame time (as the Juſtice has ſince certified to the *Rector* by Letter) that ſhe had never taken an Oath before a Magiſtrate before.

So that after all, the ſentence againſt Mr. *Colmer* was both juſt in it ſelf, being pronounced upon a full hearing and ſufficient proof; it was acknowledged by himſelf to be juſt with reſpect to his *Judges*; but he found fault with the *Witneſſes*. And now the Teſtimony of the *Witneſſes* is made appear to have been true by ſubſequent proofs; and the whole management of the Affair in keeping *Anne Sparrow* private at firſt, and afterwards conveying her away by Mr. *Colmer*'s Friends; and in perſwading her to favour Mr. *Colmer*, and lay the Child to another, is made ſo clear and undeniable by what has been ſaid, and the following proofs; that thus far at leaſt the *Rector* and *Fellows* have acted nothing irregular, but have diſcharged their duty.

The *Depoſitions* referr'd to in the precedent Diſcourſe, or confirming the Particulars thereof, are as followeth, *viz.*

The Examination of *Richard Hedges* taken upon Oath before Sir *William Walker*, one of their Majeſties Juſtices of the Peace *&c.* June 30*th.* 1690.

THis *Deponent having taken his Oath before Sir* William Walker *Knight, one of their Majeſties Juſtices of the Peace, of the City of* Oxon, *ſaith as followeth, that Mr.* James Colmer *late Fellow of* Exon-Colledge, *did bid the ſaid Deponent,* Richard Hedges, *being Overſeer of the poor of St.* Mary Magdalen *Pariſh, take the ſecurity of* Fardinand Smith, *Scrape-Trencher of the ſaid Colledge, for the Child* A

which

which Anne Sparrow *single Woman then went with, and the Parish should not be Damnified.*

Concordar cum Originali factâ debita collatione per me.

Ben. Cooper Notarum publicum.

B ANne Aris *said in the presence of us* John Freek, *and* John Clase *that Mr.* Colmer *desired the said* Anne Aris *to let him catch her by the Belly, whilst she was rubbing his Room, but she refused it: in Witness whereof we have set our hands*

July 2*d.* 1690: John Freek. John Clase.

The Information of *Mary* the wife of *Thomas Lawrence* taken upon Oath by Sir. *William Walker* Knight, one of their Majesties Justices of the Peace for the City of *Oxford*, this second day of *July* 1690.

C *THis Deponent testifieth that about six years since, being servant to* Ferdinand Smith, *whose wife was Bed maker at* Exeter-Colledge, *she the said Deponent coming into the Chamber of Mr.* Colmer *to make his Bed, he the said Mr.* Colmer *took her violently by both her hands, and threw her upon his Bed, and endeavoured to lie with her biding her lie still, which she refused, and did not yield to him, but went out of the Room, and left one of the Beds unmade, and then she went to the Trencher Room, and told her Dames Mother what Mr.* Colmer *had endeavoured to do (as is aforesaid) and declared she would never go again to Mr.* Colmer's *Room unless some body went with her.*

The Mark of *Mary*) *Lawrence.*

Concordat cum originali facta debita collatione per me

Ben. Cooper, Notarum Publicum.

The Contents of this Deposition are what the *Rector*'s Wife declar'd when Mr. *Colmer*'s Cause was heard. She having received it from the Woman her self, who gives this confirmation; though the Author of the Account, tells the world it was then disown'd

diſown'd by the party *who ſpoke it, and ſets it off thus pleaſantly, It was ſaid that the* Rector's *Wife ſaid that a certain Maid ſaid to her that ſhe had formerly ſaid to another Woman, that Mr.* Colmer *had been uncivil to her.* This may be thought wit by ſome, but by none fair dealing.

The Oath of *Alice Gigger*, &c.

D.

ALice Gigger *at preſent of* London, *Spinſter, maketh Oath that ſhe this Deponent living at one Mr.* Halls *a* Coffee-houſe *in the City of* Oxon *was ſeveral times tempted by Mr.* James Colmer *Fellow of* Exeter-Colledge *in* Oxford, *to have been naught with him, and at ſundry times offering her this Deponent money to become his Whore, and particularly at one time about two years and an half ſince he took out a handful of Money out of his Pocket, and ſhewed it her, telling her this Deponent that if ſhe would comply with him, ſhe ſhould have what ſhe would of it, or to that effect. And another time he would have had this Deponent gone out Town with him, who asked him where? He told her to the* Roſe *and* Crown *in* Hinckſey, *about two Miles out of Town: She asked how? He told her on Horſeback behind him; and withal ſaid ſhe had a good Excuſe to ask leave of her Maſter and Miſtreſs, being a Holliday, Saint* Luke's *day; and he then told her that they would take Horſe at Mr.* Crowders *in* Holywell *Pariſh, where his Horſe then ſtood, which this Deponent totally declined; He intimating his intention of making her a Whore. Another time he would have had this Deponent have left her Service and gone into the Country, and he would have maintained her as a Gentlewoman, if ſhe would yield to him; which this Deponent refuſing, he ſaid again to her, A Plague damn your fools-head. And at another time he ſaid before a Stranger in this Deponents preſence, That he would ſeveral times have had to do with this Deponent, but ſhe would not conſent. And this Deponent further ſaith, That about a Month ſince, this Deponent received a Letter from her Brother, who writ to this Deponent (at the Inſtigation of Mr.* Colmer's *Lawyer of* New Colledge *(as her Brother writes to her) that if any of* Exeter Colledge *came to her, ſhe ſhould not diſcover any thing, for if ſhe did, ſhe ſhould take care of her ſelf, for* Colmer *would do her a miſchief, beſides the Colledge would have her down upon her own charge into the Country, and put her to great trouble, or to that effect.*

Jurat. 27. die *Junii* Annoque; Dom. 1650. coram me

Rog, Meredith.

Middl. & West. } *sc.* The Examination of *Anne Sparrow* taken upon Oath before *John Ward*, Esquire, one of Their Majesties Justices of the Peace for the said County and Liberty.

E: THis *Deponent being Examin'd upon Oath, did declare that* James Colmer, *Fellow of* Exeter Colledge *in the Universitie of* Oxford, *was the only man in the world that ever had carnal knowledge of her Body, and that the said* James Colmer, *and no body else, is the only and true Father of the Bastard child, that she was delivered of about* Michaelmas *last past, at the House of* Ferdinando Smith, *in the Parish of St.* Mary Magdalen *in the City of* Oxford. *This Deponent further saith, That some time after she was delivered, Mr.* Maundrel *and Mr.* Cleaveland *did advise her to say that a Gentleman of* Christ-Church *was the Father of her Child, which by their perswasion she did to Alderman* Fyfield, *who was brought to her by Mr.* Maundrel *only to take her Examination. That the Reason they urged to perswade this Deponent to lay her Child to one of* Christ-Church, *was she should not do Mr.* Colmer *an injury, who would be expell'd if she laid the Child to him. And she further deposeth that no person living ever perswaded her to lay her Child to Mr.* Colmer. *And further saith not.*

Jurat. Coram me, *Jan.* 21. 1689. *John Ward.* The Mark of *An.* *Sparrow.*

The Constable's and Beadle's Certificates.

L THese *may Certifie whom it may concern, That it was a long time before Mrs.* Pearse (*who Lodged* Anne Sparrow *in* London, *and had carried her about three Miles off*) *could be perswaded to own where she was, but at last went along with me, and brought* Anne Sparrow *to* London, *before Justice* Ward, *which said* Anne Sparrow *drank not any thing (that I know of) in the House from whence she came, and walk'd to* London *a foot, none of us drinking any thing by the way; neither did Mr.* Kingston *of* Exeter Colledge *in* Oxon *see the said* Anne Sparrow *all that day, till he saw her in the Room before Justice* Ward, *all which I am ready to testifie upon Oath; as also that the said* Anne Sparrow *had a fair and just Examination before* John Ward, *Esq; at which I was present all that time with the Beadle, and others.*

Witness my Hand and Seal this 22d. *of* March 168$\frac{8}{9}$. *And that the said* Anne Sparrow *freely and of her own accord said most of those things to me, which she after confest upon Oath.*

Edward Warburton, *Constable.*

I am

K. I *Am alſo ready to teſtifie upon Oath, That the ſaid* Anne Sparrow *was no way in drink, when ſhe was brought to Juſtice* Ward, *before whom ſhe had a juſt and fair Examination, there being ſeveral perſons preſent, and I my ſelf being preſent all the time, and that Mr.* Kingſton *had not ſeen the ſaid* Anne Sparrow *until ſuch time, as I did fetch Mr.* Kingſton *to the Juſtice, where* Anne Sparrow *was; as alſo that Mr.* Warburton *being ſick in bed, did deſire that the above written ſhould be drawn for him, and doth own his Hand and Seal.*

Witneſs my Hand and Seal this Twenty ſecond of this Inſtant March, 1689.

William Gunter, *Beadle.*

The Examination of *Anne Sparrow* taken upon Oath before Sir *William Walker*, Knight, one of their Majeſties Juſtices of the Peace for the City of *Oxon*, *May* 5th. 1690.

L. T*His Informant ſaith, That Mr.* Colmer *Fellow of* Exeter Colledge *in* Oxford, *hath had carnal knowledge of her Body once in his Study, and ſeveral other times afterwards; and that* Alice Wats, *Servant to* Ferdinando Smith, *told her that Mr.* Colmer *had lain with her alſo ſeveral times: She alſo ſaith, That Mr.* Cleaveland *and Mr.* Maundrel *Fellows of* Exeter Colledge, *on the next day after the birth of her Child, deſir'd her to lay her Child to a Gentleman of* Chriſt-Church Colledge; *and that they perſwaded her to remove to a place provided for her, where ſhe ſhould want nothing: Whereupon ſhe went with* John Wakeland *and his Wife to their Houſe; where ſhe tarried about three Weeks, in which time Mr.* Cleaveland *and Mr.* Maundrel *came thither, and paid the aforeſaid* John Wakeland *for her Keeping; and that* John Wakeland *carried her from her Maſter's Houſe on a Horſe to* Dorcheſter, *to the Houſe of* Francis Green, *where ſhe tarried about two Months, and from thence to* Farrington, *where ſhe tarried about a Month, and from thence ſhe went in a Waggon to* London, *where ſhe was plac'd by* John Wakeland, *and ſhe alſo ſaith, That no other perſon had carnal knowledge of her Body beſides the aforeſaid Mr.* Colmer: *And before her delivery ſhe told her Dame, That Mr.* Colmer *was the Father of her Child.*

This is a true Coppy of the Examination of *Anne Sparrow*, taken before Sir *William Walker*, Knight.

William Walker.

Note. Mr. *Cleaveland* was preſent when this Examination was taken.

The Examination of *Ursula Green*, taken upon Oath, before Sir *William Walker* Knight, one of their Majesties Justices of the Peace, for the City of *Oxford*. *May* the *6th.* 1690.

M. THis *Informant saith, that* Anne Sparrow *was brought to her house at the Black boy in* Dorchester, *by* John Wakeland *Bargeman of this City, which* Wakeland *came to her House the day before he brought the said* Anne Sparrow, *and told this Informant, and her Husband* Francis Green, *that he would have them take the said* Anne, *for that a Gentleman had got her with Child, and was willing to have her out of the way, that he might not be disgrac'd, and that they might put the said* Anne *in an outward room so as she might not appear much, least she should be found out; That they should take care of her, and should be well and truly paid, and then made a bargain with them for one month, and paid the money (which was sixteen shillings) as soon as he brought the said* Anne Sparrow, *who came with him on Horse back before Eight of the Clock in the morning*: This Informant saith, that asking the said *Anne* who was the Father of her Child, she said a Gentleman, and being asked who, she said she must not tell, for fear she should be undone, but being farther prest earnestly, she said one Mr. *Colmer* Fellow of *Exeter-Colledge* was the real Father, and the only man in the world, that ever had any thing to do with her, *and that Ferdinand Smith and others*, had perswaded, and incouraged her always to say, that a Gentleman of *Christ-Church* was the Father of it, and that *John Wakeland* took the said *Anne Sparrow from her House on foot, and carried her away, whither he would not tell, And this Informant further saith, that the said* Anne Sparrow *came to her house (and stayed some time) after the said* Sparrow *had been at* London, *and then told her, that* Wakeland *carried her to* Farrington, *and came back with her after she had stayed somtime there (she riding in a Waggon) and that they lay one night at* Dorchester *at the Crown, and that* Anne *desired then to call on the said* Green, *but* Wakeland *told her, No, They must not know whither she went, for fear they should make Proclamations, and that the said* Anne *told her, that* John Wakeland *said he had thirty shillings to carry the said* Anne *to* London, *and this Informant saith, that* John Wakeland *came to her house since the said* Anne *came from* London, *and saw the said* Anne *there, and desired this Informant, to go out of the Room, for he had somthing to say to* Anne Sparrow *in private, which this Informant accordingly did, who further saith, that when* Wakeland *paid her the last money for the keeping the said* Anne Sparrow, *she asked him who 'twas*

that

that paid him the money, and where he had it, he anſwered of a Gentleman who always brought it to him, but he would not ſay he knew him; and this Informant does declare, that the ſaid Anne *told her, ſhe ſeeing Mr.* Kingſton *Fellow of* Exeter Colledge *paſs by a place in* London, *as ſhe was looking out at a Window, held out her hand and called to the ſaid Mr.* Kingſton, *and this Informant ſaith further, that the ſaid Mr.* Kingſton *ſaw* Anne Sparrow *'twice at her Houſe on* May *the* 3d. *and* 5th. *but was never alone, or in private with the ſaid* Anne Sparrow, *but did ſeveral times exhort her to ſpeak nothing but the truth, and to do the leaſt wrong to no one, whatſoever might be aſked her.*

This is a true Copy of the Examination of *Urſula Green*, taken before Sir *William Walker* Knight.

William Walker.

The Examination of *Francis Green*, taken upon Oath before Sir *William Walker* Knight, one of their Majeſties Juſtices of the Peace for the City of *Oxon*, May the 10*th.* 1690.

THis *Informant ſaith that one* John Wakeland *of* Oxon *Bargeman came to his Houſe at the* Black boy *at* Dorcheſter, *and deſired him to keep a Wench, who had a By-blow by a Gentleman who was able to maintain her, and had money enough, and that if four ſhillings a Week would not do, he ſhould have five, and bargained at laſt for ſixteen ſhillings the Month, which he paid before hand, as ſoon as ſhe was brought to his Houſe, and that* John Wakeland *did deſire to have her kept private, that ſhe might not be ſeen, that the ſaid* John Wakeland *after* Anne Sparrow (*which was the ſaid Woman*) *came from* London, *and it was known at* Oxon, *that ſhe was at the ſaid* Greens *Houſe, came over to him and earneſtly deſired the ſaid* Green, *not to bring the ſaid* Sparrow *over to* Oxford, *for that he ſhould be ruin'd and undone if he did, and that if he gave the Wench any dyet, he wou'd pay for it: This Informant further ſaith, that the abovenamed* Anne Sparrow, *while at his Houſe the firſt time, ſaid frequently, that one Mr.* Colmer *was the Father of her Child, and the only man that had to do with her, and that the ſaid* Sparrow *alſo ſaid, that Mr.* Maundrel *and Mr.* Cleaveland *overperſwaded her to lay it to a Gentleman of* Chriſt-Church, *telling her that ſhe ſhould be maintained and well provided for, and that ſhe ſhould want for nothing, and this Informant further ſaith, that he came to* Exeter-Colledge *to Goody* Smith, *to aſk of her ſomthing for* Sparrow, *and that ſhe bid him make no noiſe, and carried him into a Room, deſiring him to ſay nothing to any Body, and that what he did for her, he ſhould be ſure to be paid for.* This N.

This is a true Copy of the Examination of *Francis Green*, taken before Sir *William Walker* Knight.

William Walker.

The Deposition of *Elizabeth Roberts* Widow, taken before Sir *William Walker* Knight, one of their Majesties Justices of the Peace for the City of *Oxford*, upon Oath, *October* 9. 1690.

O. THis Deponent saith that she did never use any means for perswading Anne Sparrow to lay her Child to Mr. Colmer or any other man; and she farther saith, that when she was sent for by the Lord Bishop of Exeter at the time of his late Visitation in Exeter-Colledge, there was nothing objected against her concerning Anne Sparrow, nor any question put about her. But that this Deponent was then asked whether she knew any harm (or words to that effect) of the Rectors house, to which this Deponent answered that she did not, and was thereupon dismist. And this Deponent saith further, that when Anne Sparrow was in Oxford, she asked her the said Anne Sparrow, if ever she had perswaded her to lay her Child to Mr. Colmer, to which she answered that she never did, nor did she ever say so.

The Mark of Elizabeth Roberts.

The next part of the History *of this Affair consists of* Mr. Colmer's Appeal *to the* Bishop *of* Exeter, *and what ensued thereupon.*

Mr. *Colmer* having now by the close management of his Friends, Mr. *Cleaveland* and Mr. *Maundrel* got a verbal acquittal of his guilt from *Anne Sparrow* before a Magistrate, and secured her, as he presumed, from telling School-tales, by causing her to be convey'd far enough off, thought his Reputation would stand fair, notwithstanding what had been proved at the hearing. The next thing was to get his Sentence of Expulsion taken off; In order to which he gets an *Appeal* drawn up, and carries it to the *Lord Bishop of* Exeter, visitor of the *Colledge*, then at *London*. The *Bishop* received the *Appeal*; and granted two Instruments, the one an *Inhibition*, by which all farther proceedings against Mr. *Colmer* are forbid, (but the ultimate Act, which the *Colledge* could do, was already past) The other an Order requiring the *Rector* and *Fellows* to give an account of their proceedings *sub pœnâ juris & contemptûs*, in order to a new determination. And together with these two Instruments came his *Lordships* Letter to the *Rector*, mentioning the two Instruments, that were sent to be serv'd upon himself and the *Senior-Fellows*, and that his *Lordship* expected

pected to be attended, and particularly that Mr. *Cleaveland* and Mr. *Maundrel* should be of them that were to come.

The *Rector* and *Fellows* had no notice of this till the two Instruments were served upon them, whereby they were deprived of having opportunity to represent the matter so to his *Lordship*, as would, in all likelyhood, have prevented his *Lordship's* interposing in this Affair. It was resolved therefore that an answer should be sent to his *Lordship* with all due Reverence, with a true State of the case, both as it related to Mr. *Colmer* and themselves. This the *Rector* did in a Letter, which was presented to his *Lordship* by three of the *Fellows*. It was said therein that Mr. *Colmer* had by his *Appealing* added a new crime to his former, and a crime, for which by the same *Statute* he had incurred the same penalty, and that he had so far justified the persons concerned in his conviction, as to tell the *Rector* in the presence of Witnesses, that upon the Evidence disclos'd against himself, he himself would have judged any other person guilty: The Letter proceeded, "*My Lord*, We willingly acknowledge your *Lordship* our "*Visitor* and *Patron*, and shall upon all occasions pay your *Lordship* all "possible Reverence and all due obedience, and what is due our "*Statutes* do express, which that your *Lordship* at this distance from "your own Copy may infallibly discover, I have transcribed the "whole *Statute*.

And having then represented that the *Statutes* do not give his *Lordship* any jurisdiction to receive and determine an *Appeal*; then these words follow; *viz.*

"The answers therefore which I make to your *Lordships* two Instru-"ments, can be no other then these; 1. Whereas your *Lordship* inhibi-"teth us from proceeding any farther in the cause, the *Statute* is al-"ready executed; Mr. *Colmer* is *ipso facto* expell'd, and we need "do no more, and we could do no less. 2. Whereas your *Lordship* "requireth us to send an extract of proceedings; this we cannot do, "for that we proceeded in the same form that the *Statute* prescribes "in case the *Rector* be expell'd, *summariè, de plano, extrà strepitum Ju-"dicialem*. He added how much it was a trouble to him, to do or "say any thing, that might displease a person to whom he owed so "much honour and reverence, but comforted himself with the hopes "that his *Lordship* would ere long justify him in the performance of "his duty.

There is reason to believe that this decent Letter of the *Rector*, and the Reasons therein contained had some influence upon his *Lordship*, for that he forbare any farther proceedings for some months: But at last Dr. *Masters* is *Commissionated* to receive and determine Mr. *Colmer's appeal* in a formal visitation.

On

On the 20*th.* day of *March* 168⅘ being *Thursday*, the *Doctor* came to the *Rector's* lodgings, and told him he had a *Commission* from the *Bishop* of *Exeter*, which he would execute on *Saturday* following, and then a farther day would be appointed for proceeding. And when he went away from the house, he caus'd to be hung up at the *Chappel door* a *Citation*, requiring the *Rector* and the *Senior-Fellows* by name, to appear on *Saturday* in the *Chappel*, and a time in the forenoon was assigned.

The *Rector* and *Senior Fellows* attended at the time and place, where the *Rector* acknowledg'd the Obedience due to the *Visitor* both in person, and by Deputy, submitted to his Authority, and spoke otherwise respectively of the *Bishop*, and suitably to the occasion.

The *Commissioner* then was for adjourning till *Wednesday*, but being informed that the Statute of Visitation allow'd but three days at most, and those *proximè sequentes*, he adjourn'd to the Afternoon; where the *Commissary* took care to have the Doors open contrary to the intent of the *Statutes*. When he was proceeding to Mr. *Colmer's* case the *Rector* and Major part of the seven *Seniors* tendred him a *Protestation* against his proceeding therein. Which he accepted, and ordered to be enter'd: and promised, if they thought fit to make any additions, that they should be inserted. Some debates then arose and the *Rector* pray'd another day because he had sent for two other *Senior Fellows*, who were then absent: upon which there was an Adjournment to *Tuesday*. At which meeting the *Rector* and five of the seven *Seniors* tendred another *Protestation*, which included the former, with an addition in which they complained of, and *protested* against making the *Visitation* so publick by keeping open the Door, and admitting a promiscuous crowd of people to be present. But notwithstanding both *Protestations* were admitted, the *Commissary* proceeded; gave sentence for Mr. *Colmer* to be restored, awarded him twenty Marks for Costs, and wrote his name in the Book with his own hand. At the *Commissary's* going off, the *Rector* tendered him the *Visitation-fee* of *twenty shillings*, which the *Statutes* allow, but he refused it.

v. *These two Protestations Printed at the end of the Book.*

Though the *Rector* and *Fellows* did not acknowledge Mr. *Colmer* to be a Rightful Fellow of the *Colledge*, having been legally expelled, and no otherwise restor'd then as aforelaid, yet after the *Visitation* was over, they did not presently strike his name out of the Book, nor was he disturb'd in his possession. But the *Rector* having understood that he had been guilty of another Crime of the same kind with the former, resolved to bring that too under Examination, and the rather because of his *Majesty's* late Order for the punishment of Vice and Debauchery.

13th. *Febr.* An. *Regni* Secundo.

The

This ſecond accuſation, though for a fact precedent to the former, was for incontinence with one *Anne Aris*, who had been a Bed-maker's Daughter belonging to the *Colledge*: She had formerly laid her Child to *Ferdinand Smith*, but had confeſt privately to her Mother *Elizabeth Buckland*, and in the hearing of her Siſter *Joyce Aris*, that Mr. *Colmer* had lain with her as well as *Smith*; they two told it to *Francis Buckland* the Father-in-law. But the Mother having a Dependance upon the *Colledge*, took care not to have it go out of the Family, for fear of loſing her Employment; and when her Daughters time drew near, ſtrictly charged her, and ſo did her Siſter, to be ſure ſhe ſaid nothing of Mr. *Colmer*, when under the Midwife's hands: She took their counſel, and named *Smith* only. Her Mother was afterward troubled that ſhe had prevented her Daughter from telling the truth, and eſpecially when ſhe ſaw what diſturbance had been occaſioned in the *Colledge* through Mr. *Colmer*'s means, which might have been prevented, if ſhe had let the truth come out at firſt; ſhe therefore took occaſion to diſcharge her mind, and confeſt the whole matter. Upon which *Ann Aris* was Examined before a Juſtice of Peace, and declared as in her Depoſition. Her Mother and Siſter likewiſe depoſed that ſhe had told them two Months before her lying in, according to the contents of her Oath, and that they had perſwaded her as aforeſaid.

The *Rector* having theſe Proofs, Conven'd the Seven *Senior Fellows*, and ſummon'd Mr. *Colmer*, who appear'd. At the beginning of the meeting a *Notary* was preſent; and leaſt a *Preſident* ſhould remain of any allowed to be a *Fellow*, who had been reſtored, as Mr. *Colmer*, upon an *Appeal*, the *Rector* declared he did not look upon Mr. *Colmer* as a *Rightful*, but as a *pretended* Fellow, and that he proceeded againſt him as ſuch. The matter being then opened, Mr. *Colmer* inſiſted to have the Sentence of Dr. *Maſter's* own'd and ſubmitted to, and the Money paid that was awarded him for Coſts; otherwiſe he refuſed to anſwer, and after ſome Diſcourſe withdrew. But the *Rector* proceeded, and after the Depoſitions, he was by the judgment of the *Rector* and the *Senior Fellows* again convicted; and his Name ſtruck out of the Book.

The *Depoſitions* upon which Mr. *Colmer* was the *ſecond time* convicted of *Incontinence*, and expell'd the *Colledge*, are as follow.

The Examination of *Ann Aris* taken the 11*th.* day of *January* 1689, before Sir *William Walker*, Knight, one of Their Majesties Justices of the Peace for the City of *Oxford.*

Exeter-Colledge. THis *Examinant saith upon her Oath, That* Ferdinando Smith *had two times the carnal knowledge of her Body, in a little Room in the* Colledge, *called the* Trencher-house, *and once in Mr.* Crabb's *Chamber, who is one of the Fellows.*

And this Examinant further saith, That since one Mr. Colmer, *one of the Fellows of* Exeter Colledge, *had the carnal knowledge of her Body in his own Chamber in the said* Colledge *at two several times.*

The said Ann Aris *also saith, That she was brought to Bed on* New-years *day at Twelve of the Clock in the Night, in the year* 1688, *in her Mother's house, one Goodwife* Buckland, *in the Parish of* St. Michael, *in the City of* Oxford.

This is a true Copy of the Examination of *Ann Aris*, taken before Sir *William Walker*, Knight, one of Their Majesties Justices of the said City of *Oxford.*

William Walker.

The Certificate of *Francis Buckland* of the City of *Oxford* given the second day of *July*, 1690.

I Francis Buckland *do certifie whom it may concern, That my Wife* Elizabeth Buckland, *and Daughter-in-law* Joyce Aris, *did acquaint me sometime before* Ann Aris *was brought to Bed, that Mr.* Colmer, *Fellow of* Exeter Colledge, *and* Ferdinando Smith, *Scrape-Trencher of the same* Colledge, *had lain with her, and my Wife said she designed strictly to forbid her mentioning Mr.* Colmer *at her Labour, for fear she should be turned out of the* Colledge, *and so lose her place of Bed-maker.*

Francis Buckland.

The Deposition of *Francis Buckland* of the City of *Oxford*, taken before Sir *William Walker*, Knight, one of Their Majesties Justices of the Peace for the City of *Oxford*, the 15*th.* of *Oxford*, 1690.

This

THis Deponent upon the Oath that he hath taken doth declare, That the Contents of the foregoing Certificates, given by him the 20. day of July *laſt, were and are true.*

Francis Buckland.

The Examination of *Elizabeth Buckland*, taken upon Oath, *March* 26. 1690. before Sir *William Walker*, Knight.

THis Deponent ſaith, That her Daughter Anne Aris *about two Months before ſhe was delivered of her Child, told her and her Daughter* Joyce, *that* Ferdinando Smith *and Mr.* Colmer *Fellow of* Exeter Colledge *had lain with her: And this Deponent further ſaith, that the day before, and the ſame day her Daughter was deliver'd of her Child, ſhe perſwaded her ſaid Daughter* Ann Aris *not to name Mr.* Colmer, *becauſe ſhe was unwilling to loſe her Employment in the* Colledge.

William Walker.

The Examination of *Joyce Aris* the Daughter of the aforeſaid *Elizabeth Buckland*, taken upon Oath at the ſame time before Sir *William Walker*, Knight.

THis Deponent being by at the ſame time when her Mother examined her Daughter, the aforeſaid Ann Aris, *depoſeth that ſhe heard her Siſter ſay, That* Ferdinando Smith *and Mr.* Colmer *had lain with her, and alſo the ſaid* Joyce *further depoſeth, That ſhe and her Mother both did perſwade her Siſter, the ſaid* Ann Aris, *not to name Mr.* Colmer, *for fear her Mother ſhould loſe her Employ of Bed-making in* Exeter Colledge.

William Walker.

Upon this Mr. *Colmer* takes the ſame courſe that he had done before and *Appeals* to the *Biſhop*: Goes to *Exeter* with it, and threatens at his departure that the *Colledge* ſhould know the Effects of his Journey: The *Appeal* being tendred, his *Lordſhip* receives it, and reſolves upon a *New Viſitation* in his own perſon; and in order to it ſends his *Citation* to the *Colledge* dated *May* 16. 1690. giving notice of his intention to *Viſit* the 16 of the next Month. When his *Lordſhip* came to *Oxford*, the *Rector* and three of the *Seniors* waited upon him at his Lodgings in

Christ Church, presented him with the Respects of the *Colledge*, but desired that he would not visit; informing him that they had provided a *Protestation* under their *Common Seal* against it; because if they submitted to it (he having *Visited* so lately by his *Commissary*, and being allowed by the *Statutes* to *Visit* but *once* in *Five years*) they should betray the Priviledges of their *Colledge*, which by Oath they were bound to defend.

When his *Lordship* came to the *Colledge*, the *Rector* and *Majority* of the *Fellows* attended him, and tendred him a *Protestation* with all imaginable Respect, and appointed a Publick *Notary* to read it. But his *Lordship* pluckt it out of the *Notary*'s hand, and trod it under foot: then the *Rector* and *Fellows* withdrew. Afterwards their Names were called over; and Mr. *Colmer* amongst the rest. His *Lordship* then made some Reflexions upon most of the *Seniors*, and without adjourning to another time or place, went out of the *Colledge*.

After this his *Lordship* Petitioned *Their Majesties* in *Councel*; and an Order of Council being sent down to the *Rector* and *Fellows* to give in their Answer in Writing, they did so; and a day being appointed to hear the matter his *Lordship*'s Petition was dismist.

Not discouraged with his ill success in this attempt, he comes again to *Visit* sooner then he had declared he would; and the occasion was this; *viz.* The *Statutes* of the *Colledge* require upon pain of expulsion, that every *Fellow* that shall be present at any *Election*, shall name some certain person to supply the *Vacancy*: And because several who comply'd with the Visitor, had refused in the late *Election*, to name another person to succeed in Mr. *Colmer's* place, then vacant by his Expulsion, tho the *Bishop* had moved in Council, to have an *Inhibition* to stay the *Election*, and could not prevail; the *Rector* told them that as many as had so refused, had incurr'd the penalty of Expulsion, but not being obliged to inflict it, he would only Register them as *Obnoxious*, without proceeding any farther, unless by their future ill carriage, they should deserve it. The clause of the Stat. *de Electione Rectoris*, &c. which was the ground of what the *Rector* said and did, runs thus; *viz.* *In quam etiam pœnam* (*sc. perpetuæ amotionis a* Collegio) *omnes & singulos Scholares in nominationibus electionibus, admissionibus, aliisve negotiis utilitatem* Collegii *concernentibus*, &c. *ac rite & legitimè secundum consuetudinem vocatos & requisitos, ac deinde personaliter interesse aut effectualiter nominatim & absolute nominare & eligere renuentes incurrere volumus* ipso facto.

They being alarm'd at this, represent the matter so to the *Bishop*, that to secure them, he resolves upon a present *Visitation*. And sends

a

a *Citation* in order to it. They that thought themſelves concern'd to oppoſe it, reſolve to ſhut the *Colledge-gates*, but before the hour appointed for the *Viſitation* was come, three *Senior-Fellows* were ſent to his *Lordſhip* with a Petitionary-Letter, humbly praying him not to come. Theſe not being admitted to ſpeak with him, ſent in the ſubſtance of their meſſage by a Servant, by whom they received this Anſwer, that the *Biſhop* expected to meet with all poſſible oppoſition, but was reſolv'd to come. And ſhortly after came, the *Gates* being violently broken open to make way for him, he went to the *Hall*, where there was a great crowd of people: Yet the *Rector* and *Fellows* got in with much a do as their names were reading, and as they had don before, tendred their *Proteſtation*; which one of the *Senior-Fellows* began to read, but was not ſuffered to go on: Whereupon the *Rector* delivered it in at the Table, and he and his party withdrew. The *Fellows*, who ſided with the *Rector*, being the *Major part*, not anſwering to their names, were ſuſpended *ab Officio & beneficio*. Amongſt them were *five* of the *ſeven Seniors*, and all the Officers of the *Colledge* Then the *Viſitor* reſtor'd Mr. *Colmer*, who conſequently became one of the *Senior-Fellows*, which if it had not been done, he muſt have been forced to take in an under Graduate to make up the number of ſeven.

Here it is to be obſerv'd that the *Fellows*, who ſubmitted, tho then ſworn to preſent (amongſt other things) any that was but ſuſpected of in continency, yet did not preſent Mr. *Colmer*, tho it was notoriouſly known, that he had been twice expell'd for that crime, upon the Grounds and Evidence above-mention'd.

His *Lordſhip* having clear'd his way by removing thoſe *Fellows*, whom the *Statutes* make the proper Judges in the *Rector's* caſe, proceeds with his new party to deprive the *Rector*; and accordingly did ſo: and yet of them two diſſented, and all the reſt had been Regiſtred as *Obnoxious* to Expulſion. Then Dr. *H's* place was declared void by *Ceſſion*. And Mr. *Vivian* put out, as having been Elected into Mr. *Colmer's* place, which his *Lordſhip* judged not vacant, Mr. *Kingſton* for reading Prayers after his *Suſpenſion* was the very next day *Excommunicated* without the leaſt *admonition*; And the *Rector* admoniſhed to leave his lodgings, within ſeven days *ſub pœnâ Excommunicationis Majoris*; *i. e.* A conditional ſentence of the *greater Excommunication* is denounced againſt him, if he does not and the time being expired and he not obeying, is was actually executed in the Chappel accordingly. The *Rector* kept his lodgings notwithſtanding, being adviſed by his Council, that the *Viſitor* had not

(vide, *The Sentence of Deprivation.*)

not the power of an *Ordinary* within the *Colledge*; and that if he had, he could not make use of it in that case, *viz.* to enforce obedience to what he did as *Visitor*. That if his *Deprivation* were *legal*, he must be turned out by due course of *Law*; and not frighted from his freehold by the thunder of *Excommunication*. That for a *Bishop* to give sentence against a man in a matter of *Temporal right*, and to Excommunicate him for not submitting to it, was never practic'd *Legally*, during the *Pope's* Usurpation here, nor perhaps ever attempted since the *Abrogation* of his pretended *Supremacy*.

Upon these severe and unstatutable proceedings the *Rector* and *Fellows*, (according to the president the *Bishop* had given them in his one case) humbly represented their grievances to her *Majesty* in *Council*, whereupon the *Honourable Board* caused an *Order* to be sent to him, to give his answer in writing, which was served accordingly. But his *Lordship* has not thought fit to appear and answer as yet.

The very same day in which this *Order of Council* came out, *Seven* or *Eight* of the *Senior-Fellows* (all the rest with the Officers to the number of *Eleven* being suspended) broke open the Chappel door contrary to the Statutes, and proceeded to the Election of a new *Rector*.

§. 1. THis being a true History of the whole Affair, how far these proceedings of the *Bishop* are justifiable, and whether the *Rector* and *Fellows* have at all been irregular, or have acted contrary to the Statutes of the *Colledge*, their own Oaths and Duty, is next to be considered.

As for Mr. *Colmer's* Expulsion, that he was really guilty of the crimes laid to his charge, and that the *Rector* and *Fellows* had upon the hearing sufficient grounds to believe it, cannot but seem very evident to unprejudiced persons by the allegations and depositions abovementioned. And when there is sufficient cause for inflicting a sentence, it is very weak to ascribe it to a *distaste conceived* against the person,

Pag. 5. *the secret springs whereof are not fit to be published.*

What the *Author* means by *secret Springs of intimacy* the *Rector* understands not: But the causes of his distaste against him since are notorious, and must be made more so, that the proceedings against him abovementioned, may appear to have been no contrivance of passion or prejudice, as the *Author of the Account* would suggest where

Pag. 5. he tells us that upon Mr. *Colmer's opposing Sir* Kingston's *Election the Rector openly declar'd, that he would upon that account compass his Expulsion.* For as no such thing was ever said by the *Rector*, nor any thing to that effect; the allegation being utterly false and a malicious invention of a person, who throughout this whole proceedure has been

been forc't to make lies his refuge; so the contrary does in some measure appear by the *Rector's* consenting after this Affair of Sir *Kingston's*, to Mr. *Colmer's* proceeding Master of Art, when it was in his power by the Statutes to deny him that degree two years longer. *vid. Stat. de temp. Assum. grad.*

In order to this (viz. his Expulsion) *some months after he charges him privately with incontinence and endeavours to frighten him into a Resignation of his Fellowship.* That the *Rector* had good cause to believe him guilty of incontinence, does sufficiently appear by the preceding Narrative; and if upon information of his guilt in that kind he privately admonished him to quit the *Colledge*, it was an Act of friendship and charity to perswade him, if he were conscious of his guilt, rather to resign voluntarily, than to expose his Reputation by being publickly accused; And in the *Stat. de causis propter quas Rector priv.* &c. it is appointed, that if the *Sub Rector*, and five of the *Seniors* understand him to be guilty of an offence, meriting deprivation, they shall perswade him *ad voluntariè cedendum Officio.* Pag. 5.

I pass by the Relation that the *Author* gives, *pages* 6 and 7 of Mr. *Colmer's* conviction before the *Rector* and *Senior Fellows*, and shall not take any notice of some scurrilous reflexions, and the several false allegations that I find there. For answer to them I refer to the former Narrative, which has been drawn with all the fairness and impartiality imaginable. I shall only take notice of what he says *Pag.* 7. *that on Mr.* Colmer's *side two of the* Fellows *attested upon Oath, that the party which was with Child, not only acquitted Mr.* Colmer *before them, but own'd that she had been dealt with to accuse him.* This the *Author* calls a *plain and express Evidence.* This Evidence, such as it was, was given by Mr. *Colmer's* friends, which might justly render it then suspected, and by persons who managed the whole Affair on Mr. *Colmer's* behalf; But as it stood then before the *Rector* and *Fellows* upon the hearing, it amounted to no more then this; *viz.* the woman her self acquitted Mr. *Colmer* in the hearing of some of his friends, and own'd that she had been dealt with to accuse him. And what then? Because she had said such words to some of Mr. *Colmer's* friends in private, when she was removed out of the way by his means, and maintain'd at his charge; shall this be thought sufficient to counterpoise what she had confest to her Dame long before? the truth of which Confession appear'd by so many concomitant proofs, as that of Mr. *Colmer's* putting the Overseer of the Parish upon taking *Ferdinand Smith's* security, and promising the Parish should not be damnified; that of Mr. *Colmer's* maintaining her when she was big with Child?

that

that of *Ferdinand Smith's* refusing to name who was the Father, because a Gentleman would be expell'd; which by all circumstances appear'd to be Mr. *Colmer*, and not so much as denying that it was he? that of the *Midwife's* declaring that when *Anne Sparrow* was in Labour, her Dame *Thomasin Smith* desired her not to urge her to name the Father; because she had named him to her; who was no other then Mr. *Colmer?* with divers other Proofs and Circumstances aforementioned; of which it is far from being the least, that Mr. *Colmer* did not produce *Anne Sparrow* at the hearing to clear his innocence, which he had time enough to have done, and would unquestionably have done it, if he had not been guilty? Not to mention over again the character of his Life and conversation, which strengthened the evidence that was brought against him.

From this Sentence Mr. *Colmer* appeal'd to the *Visitor*. The *legality* of which *Appeal* is now to be enquired into; I shall endeavour, 1. To prove that no *Appeal* lies from a Sentence of Expulsion pronounc't as aforesaid, and then shall give an Answer to what is urged by the *Author of the Account*, &c. to prove that Mr. *Colmer* might lawfully appeal.

First, Let us consider what the *Rector* is sworn to for the good Government of the *Colledge*, *Omnia & singula statuta decreta ordinationes & consuetudines ejusdem Collegii firmiter observabo, & a scholaribus singulis, quantum in me fuerit*, &c. *observari faciam*, &c. *Quodque quantum in me fuerit, & in conscientiâ meâ & judicio putabo, correctiones, punitiones & reformationes, debitas, rationales atque justas de quibuscunque criminibus delictis & excessibus scholarium*, &c. *pro qualitate delicti, ubi pœnæ & punitiones non exprimuntur, expressasque juxta formam & effectum statutorum & decretorum dicti Collegii indifferenter & diligenter faciam & exercebo, seu per alios vel alium fieri & exerceri faciam & procurabo; nisi forsitan aliquando lenitatis, comitatis, charitatis, fraternitatis, misericordiæ vel clementiæ causâ alicui, in quo magna vitæ emendandæ spes videatur, favero.*

This was a pious and charitable disposition in the *Founder*, to leave a Discretionary power in the *Rector* of not proceeding to the extremity of the *Statutes* in case he should see *great hopes of amendment*, which *lenity* how far Mr. *Colmer* was entitled to, needs not be repeated.

Now by the Statute *de causis propter quas scholares privari debeant*, &c. it is provided, *Quod si quis scholarium vel Electorum, adulterii, incontinentiæ, hæresis pervicacis, homicidii voluntarii, perjurii manifesti, crebræ ebrietatis, alteriusve publicæ turpitudinis, coram Rectore, sub Rectore, Decano, & quinque aliis scholaribus* maximè senioribus *vel majore parte eorundem, cum dicti Rectoris Assensu* legirimè convictus *fuerit, ipsum perpetuò*

petuò excluſum & privatum a dicto Collegio, nullâ aliâ monitione premiſſâ, virtute præſentis Statuti decernimus.

And by the Statute *de Admiſſione eorum qui electi ſunt in perpetuos Scholares*, &c. Part of their Oath is in theſe words: *Viz. Item ſi contingat me poſthac per Rectorem, aut in hujuſmodi habentes intereſſe corrigi & puniri aut a dicti Collegii ſuſtentatione Ejici & expelli, excludi, privari vel a moveri* propter mea *forſan* demerita, *ipſum Rectorem, ſeu alias perſonas, ſeu eorum aliquam occaſione expulſionis, vel correctionis hujuſmodi, nunquam perſequar, moleſtabo vel inquietabo per me, alium vel alios, ſeu ab aliis perſequi, moleſtari ſeu inquietari eâ de causâ, quantum in me fuerit permittam, ſed purè, ſponte, ſimpliciter & abſolutè omni actioni contra Rectorem, aut alios dicti Collegii Scholares, quomodolibet appellationi & querelæ in eâ parte faciendis* ac quarumcunque litterarum impetrationi, *precibus Principum*, Prelatorum, *Procerum, Magnatum, & aliorum quorumcunque, quibus poſſem ad jus titulum & poſſeſſionem vendicandam reconciliari*, ac quibuslibet juris vel facti remediis, *per quæ me petere poſſem in integrum reſtitui, quantumcunque aliàs mihi probitatis & vitæ merita ſuffragentur, in vim pacti renuncio.*

That the Statutes of a *Colledge* are the *local Laws* of the Society, and binding to all Members thereof, as ſuch, cannot be denied; and that the Power and Authority of all ſuch as have any ſhare in the Government of ſuch a Society, muſt be warranted by thoſe local Laws, is ſo evident that there needs nothing to be alledg'd in proof of it; and that if any perſon who by the Statutes has authority within the Colledge, accroaches to himſelf a Juriſdiction not only not warranted by the Statutes, but directly contrary to them, he invades the Rights and Priviledges of a Colledge over which he uſurpes ſuch pretended Juriſdiction, and both may and muſt be oppoſed therein by ſuch of the Colledge, who have any regard to the ſolemn Oath they have taken, to obſerve faithfully, themſelves, and as far as in them lies to cauſe to be obſerved by others, *Omnia & ſingula Statuta, decreta & conſuetudines Collegii.* vid. *The Fellows Oath* in fine.

Now that one Statute of the Colledge provides there ſhall be no Appeal at all from a Sentence of Expulſion pronounc'd by the Rector, *&c.* for *Incontinency* appears by the laſt mention'd Statute *de Admiſſione eorum*, &c. and the Oath thereby preſcribed, as plain as words can make a thing. The words are univerſal and comprehenſive, and ſuch as will admit of no exception; *nunquam perſequar, moleſtabo nec inquietabo, per me vel per alios.* How does this conſiſt with carrying a complaint againſt the *Rector* and *Senior Fellows*, and getting them cited and arraign'd as Criminals, and fined for their Sentence? How does a re-

nouncing *Quomodolibet appellationi* consist with appealing to the Bishop of *Exeter*, unless an *Appeal* to him as *Visitor* had been excepted out of the Oath? May a Fellow that's expell'd as aforesaid, and has sworn not to procure *quascunque litteras Principum, Prelatorum, &c.* procure Letters and Instruments from the Bishop of *Exeter* notwithstanding? Are not the words, *quibuslibet Juris & facti remediis*, as full and comprehensive as the wit of man could invent to impose an acquiescence in the Sentence, without having recourse to a superior Judge to obtain a rehearing? Is it not a Reflexion on the *Founder*'s understanding to suppose that he would make use of so many general and emphatical phrases to exclude seeking relief against a Sentence pronounc'd as aforesaid, and not add a word to except an *Appeal* to the *Visitor*, if at the same time it was not his intention to exclude such *Appeals*?

Now this being the plain and obvious sense of the words to exclude an *Appeal* to the *Visitor*, as well as to any foreign Jurisdiction whatsoever; nay the words importing it so violently that without adding an imaginary Exception, or supposing the *Founder* not able to express his mind in proper terms, they cannot be otherwise understood; the *Colledge* is bound to take them so, and to observe them accordingly, and are bound by Oath under pain of Deprivation so to do; *viz. Secundum planum, litteralem & Grammaticalem sensum.* Nor can the *Visitor* affix any Interpretation of his own to them, unless requested by the *Rector* and the major part of the *Scholars.*

V. *Stat. de Electione Rectoris & ejus Jur. Stat. de qualitate eligendorum Scholarium, & de Jur. & Stat.* Guil. Petrei.

And that it was his intention and the design of enjoyning this Oath, to exclude the *Visitor*'s Jurisdiction as well as that of any other person, or Court, as far as it was possible for him to do, will appear farther by taking notice what provision is made in other Statutes for the final ending of Controversies arising within the Colledge. By the *Stat. de causis propter quas Scholares, &c.* it is appointed that in case differences arise betwixt the Scholars or any other residing within the Colledge, and that the parties at variance do not agree within a day, nor that the *Rector*, or in his absence the *Sub-Rector*, and three of the *maximè Seniores* determine it within two days, then the *Rector* together with the *Sub Rector*, the *Dean*, and *five Seniors*, shall within three days next after *Summariè & de plano eam (discordiam, &c.) examinare, &c. Et quicquid Rector cum predictis, &c. duxerit ordinandum, executioni absque contradictione cujuscunque demandetur. Nec liceat alicui de dicto Collegio, cujuscunque status aut gradus extiterit, occasione rixæ, jurgii aut dissensionis intra dictum Collegium, aut extrà inter eosdem ortæ vel motæ, prosecutionem facere, aut litem aliquam movere, vel aliquem impetere, aut in Judicium trahere coram aliquo Judice Extrinseco Ecclesiastico vel seculari.*

But

But it may be the *Viſitor*'s power may be let in notwithſtanding theſe words, for he will pretend to be no *Judex Extrinſecus*. No, it appears by what follows that every perſon whatſoever, who is neither *Rector*, *Sub-Rector*, *Dean*, nor one of the *Senior Fellows* is a *Judex extrinſecus*, within the meaning of this Statute, *Sed volumus omnino, quod hujuſmodi jurgia, iræ, rixæ, diſcordiæ, & diſſenſiones*, &c. *per perſonas prædictas*, &c. *terminentur & finiantur.*

In like manner differences ariſing betwixt the *Rector* and the Scholars, if not determined within twenty days by the *Sub-Rector*, the *Dean*, and three of the *Maximè Seniores*, are to be determined by the *Chancellor* of the Univerſity, or the *Vice-Chancellor*, or his *Commiſſary*, to whoſe determination the *Rector* is to ſtand, *Et eidem ſine contradictione parere.* Stat. de Jur. Rectoris.

If the *Rector* be Statutably expell'd, he is bound by his Oath, in like manner, as the Fellows are, not to ſeek any remedy by *Appeal* or otherwiſe; *Vid. Stat. de Elect. & Juram. Rector.* Nor is it poſſible for him to *appeal* to the *Viſitor*, for that by the *Stat. Propter quas cauſas Rector*, &c. *the Biſhop of Exeter* muſt be a party to his amotion. And it may ſeem hard and unreaſonable, that the *Founder* ſhould have utterly cut off the *Rector* from appealing, and yet leave a door open for every Fellow in the Colledge to have the benefit of an *Appeal.*

Beſides theſe proofs that *Appeals* are excluded, which are grounded upon the words of the Statutes themſelves, we have a ſubſequent proof of what we aſſert, which though it be a negative one, yet in this caſe is as forcible as any affirmative proof whatſoever; and that is, that till this late *Appeal* in Mr. *Colmer*'s caſe, there never was any *Appeal* to the *Viſitor* from the ſentence of the *Rector* and *Fellows.* Subſequent practice is always held to be the trueſt Expoſitor of the meaning of a Law; they that lived neareſt to the time when it was made, are reaſonably ſuppoſed to have underſtood the intention of the Law-giver beſt.

Littleton argues, *That no action can be brought upon the* Stat. of Merton, *becauſe it was never ſeen or heard that any ſuch action had been brought: And if any action might have been brought, it ſhall be intended, that at one time or other it would have been put in ure.* Upon which *Lord Cook* ſays, *Though an Act of Parliament cannot by* non-uſer *be antiquated or loſe his force, yet* non-uſer *may expound or declare how the Act is to be underſtood.* So we find in *Dyer* 376. *a.* that a Writ of *Error* lyeth not of a Judgment given in the *Cinque-ports*, *Pro eo quod nullum tale breve in Regiſtro nec in aliquibus Præſidentibus Curiarum inveniri potuerat.* Since therefore no *Preſident* of ſuch an *Appeal* as is now contended for, can be

1ſt. *Inſt. fol.* 81. b.

Litt. *Sect.* 108.

shewn, it must be understood to have been the common construction upon the Statutes ever since they were made, that no such *Appeals* should be commenced.

I shall add one Observation more grounded upon the *Probationer*'s Oath, which with respect to the matter in hand differs very little in words, and I suppose not at all in sense from this of the *Fellows*. There are these words in it, *Omni actioni seculari, canonicæ & civili, appellationique & querelæ in eâ parte faciendæ*, &c. *Et quibus libet Juris & facti remediis*, &c. *in vim pacti renuncio expressè in præsenti, & renunciabo in Scriptis, si exactus fuero in meâ expulsione.* Although this promise to renounce in writing, if required, be not inserted into the *Fellows* Oath, yet I presume it will not be denied but a renunciation by a promissory Oath *in vim pacti*, is and was design'd by the *Founder* to *be* a renunciation, so far forth as a man can renounce by Oath, of all the remedies that such a renunciation *in scriptis* would have precluded him from. And then if Mr. *Colmer* could not have had his *Appeal*, in case he had renounc'd *in scriptis*; no more could he prosecute it now, without breaking his Oath.

Thus far from the Letter of the *Statute*, taken in that *plain Grammatical sense* in which they direct themselves to be understood, from the design of the *Founder* collected from some Observations upon other Statutes, and from subsequent usage, it has been shewn that *Appeals* to the *Visitor* are excluded in the case in question.

The reason and policy of his confining the Government of the *Colledge*, and the determining of all Controversies that should arise within the same, to the Jurisdiction of the *Rector*, *Sub-Rector*, the *Dean*, and the *Senior Fellows*, excepting where the Power of the *Visitor*, or of the *Chancellor*, *Vice-chancellor*, &c. is expresly let in, may be reasonably suppos'd to have been for the peace and quiet of the House: Which being a Society of persons bred up to study, and professing Divinity, ought in both respects to have their Government managed with as little noise and clamour, and as free from disturbances, as the nature of the thing will permit. It was therefore made part of the *Probationer*'s Oath, *Quod tranquillitatem, pacem, concordiam*, &c. *dicti Collegii & Scholarium unitatem, quantum in me fuerit & ad me pertinuerit, viis & modis quibus potero, observabo.* And therefore it was, that differences arising within the *Colledge*, are to be determined by the persons authorized by the *Statutes* to take cognizance of them, *Summariè & de plano & sine strepitu Judiciali.* But what a disturbance would it be to such a Society of men, devoted to their Studies, to be subjected upon the complaint of every vexatious person, to the noise and clut-

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ter of a Court of *Appeals*? *Appeals* may be brought from any other *Cenſures*, though never ſo ſmall, as well as from a Sentence of *Expulſion*; and if ſuch a door be left open, what encouragement it might give to feuds and diſſentions, is obvious enough. Perſons really criminal, and duly cenſured, might however by friends and intereſt ſometimes prevail ſo as to give great trouble to the Society, and procure a reverſal of their moſt legal and juſt Acts. And in all likelihood the Members of the Society will be the more careful to avoid the committing of ſuch crimes as are puniſhable by the *Statutes*, when they know before hand that they can have no redreſs elſewhere, if *cenſured* at home. And thoſe of the Society muſt needs be diſcouraged from doing their duty, and keeping a ſtrict Diſcipline, if they find themſelves in danger to be called to an account for every Act of Juriſdiction that they exert, and puniſhed for it themſelves.

But notwithſtanding all this the *Author of the Account* will have it that Mr. *Colmer* might lawfully *Appeal*, and the *Biſhop* of *Exeter* receive and proceed thereupon as he has done.

The next thing therefore to be done, is to examine what is alledged to juſtify a thing that appears ſo directly contrary to the words of the *Statutes*, and to the *Founder's* intention. Why, the opinion of Dr. *Bouchier* is delivered to us, and the reaſons upon which he grounded it.

Firſt, The Oath being acceſſary to the Statutes did only reſtrain thoſe perſons from vexatious appeals, who were expell'd according to the appointment and direction of the Statute, and according to the form therein laid down and preſcribed. Pag. 8.

What he means by the *Oath being acceſſary* to the *Statute*, I ſhall leave it to himſelf to explain. I take the Oath it ſelf, ſince the very words of it are inſerted into a *Statute*, to be as much part of the *Statutes* of *Exeter-Colledge*, as any thing elſe in them is. An *Oath* impoſed by an *Act of Parliament* is part of the *Act*, and the words of it diſcloſe the mind of the Legiſlators as much as any thing contained in the body of the *Act*, or of any other *Act*, to which the *Oath* (to uſe the *Author's* expreſſion) may be ſaid to be *acceſſary*, can do. But that which impoſed upon the *Author* was this; *viz.* the *Stat. de cauſis propter quas Scholares*, &c. impowers the *Rector* &c. to expel a *Fellow* that is *legitimè convictus*, &c. And this *Oath* (ſays he) is *acceſſary* to that *Statute*, and therefore does not tie up the perſon expell'd from *Appealing*, unleſs he be *legitimè convictus*. Whether Mr. *Colmer* was *legitimè convictus* or no within the intention of the *Founder*, we ſhall enquire by

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and by. But this fallacy, of the *Oath* being *accessary* (as he calls it) to this *Statute*, must not escape without a detection. When an *Oath* is imposed by a Law upon such as Act by Vertue thereof, or are bound by it, to put it in execution or to obey accordingly, there the *Oath* is relative to the Law, and the Obligation of it reaches no farther then the Law carries it. But where an *Oath* is imposed by a separate distinct Law, without any such relation, there the Law that imposeth the *Oath* creates a duty of performing it in the genuine sense, that the words import, and in this case of ours, in the *plain*, *litteral* and *Grammatical sense*. If there were a *Statute* of the *Colledge* concerning *Appeals*, allowing them in some cases, and restraining them in others; and an *Oath* enjoyned to observe the *Statutes*, or that *Statute* in particular, there the *Oath* would be what the *Author* calls *accessary*. But in this case, there is no provision made by any clause in any *Statute* for *Appeals* at all; but particular directions for the final ending of controversies and punishing offences within the *Colledge*; and an *Oath* imposed to acquiesce in such determination.

To prove that one may appeal, if not expell'd according to the appointment and direction of the *Statute*, he quotes a clause out of the *Probationer's Oath*; *si contingat me* (*quod absit*) *juxta formam & exigentiam statutorum a prædicto Collegio expelli seu amoveri*, &c. *Nunquam*, &c. Whereas the question is upon the *Fellow's Oath*, in which those words *secundum formam & exigentiam Statutorum* do not occur. Tho if they were there, it would not alter the case much, unless it was made appear that Mr. *Colmer* was not Statutably Expell'd. He was Expell'd by the Persons, that have authority by the *Statutes* to Expell, and for a crime that by the *Statutes* deserves Expulsion, so that the *forma & exigentia* was at least so far observ'd. And if it were screw'd farther and made to extend to the merits of the cause; then it were impertinent to impose an *Oath* not to *Appeal*, and at the same time to leave men at liberty to *Appeal* when ever they find or think themselves aggrieved.

His *second Argument* is, that the *Statute* requires a legal conviction. *legitimè convictus*, &c.

If the Founder had required what we call a *legal conviction*, he would I presume have used the word *legaliter* or *secundum legem terræ* or the like; *legitimè* not being a word that enforces a reference to the *Common-Law*. If he had required a *legal conviction*, he would not have directed the prosecution to be before persons that cannot in a strict acceptation of the word, *legally convict*, A *legal conviction* is upon *Oath*, which the *Rector* and *Senior-Fellows* have no power

to

to adminiſter, and ſome of the crimes mention'd in the *Stat. de cauſis propter quas Scholares*, &c. are ſuch as a man cannot be *legally convicted* of but by Jury; as *willful man-ſlaughter*, *manifeſt perjury*, &c. and yet of theſe a Scholar may be *legitimè convictus* within the intention of the Statute *Coram Rectore*, &c. who cannot impannel a Jury. So that the word *legitimè convictus* cannot in the nature of the thing import the ſtrictneſs and formality of a *legal conviction*; But (ſays he) *the proofs were ſo far from making a legal conviction*, &c. *Proofs making a conviction* is another of his Expreſſions, that no body elſe would have uſed.

It is the Verdict of a Jury or the Sentence of a Judge that makes the *conviction*; *Proofs* are but Evidence; and a man may be *legally convict* without them, as when a Jury finds a Verdict upon their own knowledge. But according to this Gentleman's interpretation of the *Statute* the word *legitimè convictus* muſt ſignifie convicted upon ſuch proof, as would upon a Tryal at Law be ſufficient legal proof to convict, and every man that is not ſo convicted, may appeal. Which as it is a new-fangled Interpretatton, and ſcarce deſerves an anſwer; So it is contrary to the common acceptation of words. A *legal conviction* (which he would have the words of the *Statute* Import) may be, tho the Evidence be deficient, and the Jury corrupt, as a judgement of a Court in a cauſe depending before them judicially, is a *legal* judgment, tho there be error in it. Every Verdict in a criminal cauſe is *legale judicium parium*; and is ſo true in the eye of the Law, that the party convicted has no remedy, tho he be wronged, for there lies no *Attaint* in criminal matters. So the Sentence of the *Rector* and *Fellows* in Mr. *Colmer's* caſe was, *legitima convictio*, becauſe they had conuſance of his cauſe; and as the Law of the Realm cuts off *Appeals* from the Verdict of a Jury in criminal cauſes, ſo do the *Statutes* of the *Colledge* bar all *Appeals* from ſuch a Sentence.

Words are to be underſtood *ſecundum ſubjectam materiam*; the word *proof* generally ſpeaking is underſtood of proof by *Jury*, which is the Common-Law trial; but how many Caſes have we in our Books in which that word is otherwiſe taken, becauſe determin'd ſo by the ſubject matter? *Legitimè convictus* in the *Statutes* of a Colledge muſt of neceſſity be underſtood of ſuch a Conviction as the Statutes direct. But the Statutes neither do require, nor can preſcribe what we call a *Legal Conviction*, becauſe they cannot inveſt the *Rector*, &c. with authority to hold a *Court*, and adminiſter Juſtice according to Law.

But for a full and clear anſwer (if what has been ſaid do not ſuffice) let us examine how the word *Legitimè* is apply'd in other Statutes; and hear the Founder explaining himſelf. In

In the Statute *de Elect. Rector. & ejus juramento*, we find the word *Legitimè* twice used; 1. Where all Scholars *in nominationibus, electionibus, admissionibus, aliisve negotiis utilitatem Collegii concernentibus*, &c. *interesse habentes, ac rite & legitimè secundum consuetudinem vocati & requisiti*, and then refusing to give their Votes for the *Election* of a new *Rector*, are subjected to a penalty. Here the word *legitimè* is explained by *per consuetudinem*, the custom of the Colledge.

2*dly*. Before they proceed to *Election* the *Statute* must be read *per Subrectorem, aut eo absente vel* legitimè impedito, *per Scholarem maximè Seniorem*, &c. here *legitimè impediri* imports a reasonable cause of absence.

3*dly*. In the *Statute de sedendo ad mensam*; *Battellarii nec in aulâ nec alibi intrà Collegium absque causa* legitima *& approbata, alium quam Latinum aut Grecum exercitent sermonem sub pœnâ pro arbitrio Rectoris injungendâ*. Here *causa legitima* is such a cause as the *Rector* shall allow to be a reasonable cause.

4*thly*. In the *Statute de ordinationibus bis in Anno ad minis legendis*, it is provided, That if any of the Scholars be absent from the Reading of the Statutes, *impedimento* legitimo *cessante, per eum qui convocavit approbando*, such absent Scholar shall be turn'd out of Commons for fifteen days. Here *impedimentum legitimum*, is such hindrance as the *Rector*, or in his absence the *Sub-Rector* shall allow to be a reasonable cause of Excuse.

5. By the *Statute de Pernoctatione*, if a Scholar offend the fourth time in that kind and be thereof, Legitimè *convictus Judicio Rectoris & quinque aliorum maximè Seniorum vel majoris partis eorundem*, &c. he is to be *expell'd*. Here a lawful conviction is a conviction upon such a proof of his guilt as shall satisfie the judgment of the *Rector*, and the more part of the *five Senior Fellows*. And in the common acceptation of words, *Coram Rectore*, &c. *& quinque aliis Scholaribus maximè Senioribus* in the *Stat. de causis propter quas Scholares*, &c. is the same there with *Judicio Rectoris & quinque aliorum*, &c. here.

Now since it appears by these Instances, that the word *legitimè* had not in the *Founder*'s intention any relation to what in strictness of speech we call *legal*; why should we tye it up to that sense in the case in question? Especially since in the *Statute* for the Expulsion of the *Rector*, *sufficientes informationes* are all that are required; and the sufficiency of them must rest in the judgment of the persons that are impowered to expell him, because he is debarr'd of any *Appeal*.

His

His third Argument is, That in the *Oath* it ſelf, the word *mea* ſhews plainly, that the *demerita* muſt be in a true, and not in an imputed ſenſe. The Engliſh of which I take to be, if the Author would deliver himſelf in ſuch words as other men uſe, That if a man be expell'd for a Crime, of which he is really not guilty, he may *appeal*, notwithſtanding his *Oath*, becauſe of the words *propter mea demerita*; and a man that is innocent, is not expell'd for *his* demerits.

Yes, a man that is indicted of Felony, and convicted and executed, tho innocent, ſuffers for *his* Crime. When a man has undergone ſuch a Trial as the Law requires, and is convicted, in the eye of the Law he is guilty, and muſt undergo whatever the Law inflicts, for a Crime that the Law ſays is *his*. But it is a fooliſh and childiſh quibble to catch at the word *mea*, and apply it as the Doctor has done: If the words *propter mea demerita* had been left out, yet all men would have underſtood the *Expulſion* ſpoken of to be meant of an Expulſion for an *Offence*; and then *expreſſio eorum quæ tacitè inſunt nihil operatur*. Nor does he act fairly, in quoting the words *mea demerita*, without the word *forſan*: The Oath runs, *propter mea forſan demerita*; ſo that the Founder conſidered, that tho a perſon ought not to be expelled but for his demerits, yet ſo it might fall out, that a perſon expell'd might be innocent. and otherwiſe of good worth and fame; *quantumcunque aliàs mihi probitatis & vitæ merita ſuffragentur*: in which caſe, for peace and quiet ſake, he requires an *Oath* to ſubmit to the Sentence, ſo far forth as not to call the perſons that pronounc'd it, in queſtion for it before any Court or Judge whatſoever.

But this miſchief would follow, *if a perſon that is innocent of the Crime objected*, might not *appeal*; viz. *He muſt be forc'd to own That by virtue of his Oath, whereof he is not guilty; which were great impiety.* Pag. 9.

But I can ſee no ſuch Conſequence as that: If I am bound or ſworn to ſubmit to an Award, as I am equally concluded by it, whether it be juſt or unjuſt, ſo my ſubmitting to it is no confeſſion or acknowledgment on my part, that it is juſt, but proceeds from the obligation that I have put my ſelf under, to be concluded by it, right or wrong. Mr. *Colmer* (upon a ſuppoſition of his innocence) was under no obligation by his *Oath* to acknowledge the Sentence *juſt*, or to own himſelf *guilty*; he might have taken all prudential methods of clearing his Reputation, without impeaching or moleſting the Perſons who pronounc'd Sentence againſt him: he might have had the Woman ſolemnly examin'd before a Magiſtrate, in his own preſence, where by many circumſtances the true Father might have been found out, and his innocence clear'd: he might have had an Action at Law againſt any of the Witneſſes; and upon the Trial the truth would, in all likelihood, have come out: he might, if injur'd, by diſcovering and acquainting the Rector and Fellows who

expell'd him, with such Evidences of his innocence as did not appear upon his Trial, have entitled himself to a Re-admission, which would have restor'd him in Reputation to all intents and purposes. But this reason drawn from the word *mea*, &c. (if there were any weight in it) would do Mr. *Colmer* no service, unless he were really innocent; which that he is not, I appeal to the Depositions and Allegations aforesaid.

The fourth Reason is, *That the plain design of the Oath is to secure the College from any Action at Law, or Disturbance from abroad; That an Appeal to the Visitor is not expresly forbidden; That, in an equitable sense, those general words may be intended to restrain the Party from Appeal to an extraneous, not a domestick Court; to a foreign Judge, not to the Visitor, who is a part, and the first Member of the College.*

It is true, that the design of the *Oath* was to secure the College from any Action at Law, or disturbance *from abroad*; and as true, that the disturbance given lately to the College, was a disturbance *from abroad*: The Bishop is not a Member of the College; he has no Name in the Book, nor Seat in the Chappel, nor any Lodging in the House, not so much as when he comes to Visit. All Judges, but the *Rector* and *seven Senior Fellows*, are *Judices extranei*, within the intention of the Founder, as has been observ'd already from the Statute, *De causis, propter quas Scholares, &c.* where *aliquis Judex extrinsecus Ecclesiasticus vel Secularis*, is directly opposed to the *Rector* and *Senior Fellows*.

That an Appeal to the *Visitor* is not expresly mention'd, is true; that is, it is not mentioned by name: but it is as expresly forbidden, as if it had been named; as expresly as the Command, *Thou shalt do no Murther*, forbids *John a Stiles* to commit Murther. The Author had read a Rule in Law, That the Jurisdiction of the *King's Courts* at *Westminster*, is not excluded by an Act of Parliament, unless they be named; and this he applies to the Power of a *Visitor*. Whereas those Courts are of Ancient and General Jurisdiction, which therefore is not supposed to be excluded, unless by name: But the Power of a Visitor is created and limited by the Statutes of the College, and can therefore claim no such exemption from the general words, whereby *all Appeals* are renounced. Whereas he urges, That an Appeal to the Visitor was most obvious to be thought on, and would therefore have been mentioned, if designed to be precluded: I may with better reason turn it upon himself; If it was so obvious to be thought on, it would have been excepted, if not designed to be restrained, as well as other foreign Remedies.

The fifth Argument is, *Because these Interpretations of the Oath are most consonant to Law, and least tending to establish Arbitrary Power, and to exclude legal Remedies.*

It

It has been ſaid already, That the Oath is to be taked in the *plain, literal*, and *grammatical* ſenſe, from which the *Rector* and *Fellows* are ſworn not to depart; and therefore it is in vain in this Caſe to urge ſpecious pretences of what may ſeem in the Author's Opinion conſonant to Law. The urging of inconveniences, is quarrelling with the Oath it ſelf, as if it needed mending. We muſt now take it as it is, and it muſt and ought to be obſerved according to the *literal* and *grammatical ſenſe*, unleſs that ſenſe be directly contrary to Law; which it is not. It is not againſt the Law for a man to wave his right of *Appealing*, no more than it is againſt Law for a man to give a *releaſe of Errors*. A man may *cedere Jure ſuo. Quilibet poteſt renunciare Juri pro ſe introducto.* If an *Appeal* would lie to the *Viſitor*, in caſe this *Oath* had not been enjoin'd, then a renunciation *quomodolibet appellationi in vim pacti*, is a renunciation of that remedy. The Founder muſt be allow'd to grant his Benefaction on his own terms: *Cujus eſt dare ejus eſt diſponere.* And now this is the true ſtate of the preſent Caſe. A *Fellow* is admitted upon this Condition, amongſt others, That in caſe he ſhall be expell'd by the *Rector* and *ſeven Seniors*, he ſhall never give them nor the *College* any trouble, by ſeeking remedy elſewhere. His accepting a Fellowſhip with this promiſe, is therefore called a *Pactum* in the very Oath; *quomodolibet appellationi* in vim pacti *renuncio.* I cannot but obſerve how theſe words are conceal'd by an *&c.* in the late Pamphlet: they ſeem'd to carry ſuch a force along with them, as the Author was not willing a Reader ſhould take notice of. Tho if it ſhould be admitted that a perſon expell'd as aforeſaid, is not precluded from ſeeking remedy by Law; and that ſo private a Conſtitution as that of a particular College, does not, nor can exclude the Juriſdiction of the *King's Courts*: yet it cannot in this Caſe but exclude an *Appeal* to the *Viſitor*, whoſe Authority is grounded upon, and created by the Statutes themſelves. And can it be conceived, that a *Founder* would inveſt the *Viſitor* with a Power to receive Appeals, and at the ſame time lay an Obligation by Oath upon all of his Foundation not to bring any?

What is ſaid concerning *Arbitrary Power*, is ridiculous: *Arbitrary Power* is power exerciſed without or againſt Law; but the *Rector* and *Fellows* have Power by their Statutes, and thoſe confirm'd by Letters-Patents; and they are under an *Oath* to obſerve their Statutes, and to act according to the direction and intent of them. And why ſhould it be thought, that the Judgment of eight Divines, and under an Oath, ſhould be more arbitrary than that of a ſingle Commiſſary, not ſworn at all?

As for the excluſion of *legal* Remedies, a man may, to be ſure, preclude himſelf of them; and if a renunciation *quibuſlibet Juris remediis*, does not preclude him as far as words can do it, I know not what words can. This Conſtitution, perhaps, does not reſtrain the Juriſdiction of

the Courts of Law; but it certainly makes him perjur'd, that having taken this *Oath*, shall apply himself to them for redress. And where is the Justice in allowing a man legal remedies against wrong-doing, when he has quitted them of his own accord? When a man has submitted to a *Rule of Court* not to bring a *Writ of Error*, or a *Bill in Equity*; does he undergo any hardship by being bound to obey it, tho there be *Error* in the Judgment, or tho he might have had relief in Equity, had he not tied himself up from seeking it? Tho there is little reason from the Constitution to apprehend that wrong will be done. And it is every whit as reasonable, and perhaps much more so, that *one Fellow* should acquiesce in the Sentence of the College, than that the *Rector* and *Seniors* should, upon his Complaint, be called before another Judge, to whom they must submit without *Appeal*.

It must be remembred too, That tho the Founder has taken good care that none of the Fellows may receive wrong, yet he was concern'd to do it in such a manner, as that no Grievance, Prejudice, or Disturbance might accrue to the Society, in case any such wrong should happen. The Common Good and Interest of the Whole was the chief End of his Legislation: and for a Private Interest to give place to a Publick Good, is not only reasonable in it self, but absolutely necessary for the support of all Communities.

Thus I have endeavoured to give an Answer to the *Doctor*'s five Reasons why an *Appeal* should lie.

The next thing our Author does, is to acquaint us with the Arguments upon which his Lordship grounded his Opinion, That an *Appeal* lay to himself; and that, as *Ordinary*, He was the proper Judge of *Appeals*.

Pag. 12. The first is, *Since a Fellow may appeal, there must be a competent Judge of the Appeal; and not only no other intermediate Judge can be assign'd, but all other Judges are, in Causes relating to the College, expresly excluded.*

If it be not contrary to the Statutes for a Fellow to appeal, there must be a competent Judge of the Appeal: But I have endeavoured to prove, and hope I have made it clear, That a Fellow may not appeal. And a farther Argument may be drawn for it, from the *Founder*'s not having appointed a Judge to receive and determine an Appeal; which without question he would have done, if he had not intended there should be no Appeals; for he is very particular in directing how and by whom the several Controversies and Differences, that may arise within the Society, shall be composed.

All other Judges are excluded by Statute. What are they excluded from? Why, from receiving Appeals. If all other Judges *besides the Bishop of Exeter*

Exeter had been expreſly by Statute excluded from receiving Appeals, it would be very ſtrong on his Lordſhip's ſide, that he might receive them: But the Statute that is quoted for this, is the Statute *de Viſitatione*, which commits to the Biſhop of *Exeter*, and his Deputy, *ad poterea nemini*, Power to come and *Viſit*. Which if it makes at all for his purpoſe, it proves too much; for if *Viſiting* and *receiving Appeals* be one and the ſame thing, then Dr. *Maſters* his coming as he did, was a *Viſitation*; and his Lordſhip could not juſtifie his own coming again till five years after. But this Statute has nothing in it concerning *Appeals*; and it is obſervable how hard his Lordſhip was put to it to find out a colourable pretence for his Juriſdiction.

His ſecond Reaſon is: *The force of the word* Ordinarius *does neceſſarily import* Univerſality of Juriſdiction: *and therefore, where no intermediate Juriſdiction is plac'd any where elſe, this, to prevent the defect of Juſtice, muſt be let in.* Pag. 12.

This is ſuch a Reaſon, as that Reſpect to his Lordſhip's Character tempts me to believe the Author has impoſed it upon him, and that his Lordſhip never entertained ſo weak a thought himſelf. The word *Ordinarius* is not in the Statute *Subſtantivè*; the Biſhop is conſtituted *Ordinarius Viſitator*, which in Engliſh ſignifies *the Viſitor of courſe*. To dream of *Univerſality of Juriſdiction*, and of *Epiſcopal Juriſdiction*, becauſe of the ſound of a word, is a Conceit that needs no other refutation than the mentioning of it.

The third Reaſon is: *Becauſe the words in the beginning of the Statute are general, and apt for an univerſal Proviſion; and therefore, tho the Viſitation of the whole College be reſtrain'd to Requiſition, or five years, the general words cannot be ſatisfied therewith; for there may be a Combination of the Majority of the Seniors, who only have power to deſire it.*

But thoſe *general words* that the Author urges, are but by way of Introduction to the *particular Proviſion* that is made afterwards for the obviating and redreſſing thoſe inconveniences that are recited in the *Preamble* of the Statute. The Founder takes notice, That it is impoſſible to make Laws and Statutes, which may not by ſome invented fraud be defeated of their due execution; and *eam ob'cauſam* repoſes a confidence in the Biſhops of *Exeter* for the time being, *ut ad hocvalvearium conſervandum invigilent, ut Statuta & Ordinationes dicti Collegii firmiter obſerventur*, &c. *Jura, libertates & privilegia defendantur & protegantur.* And in order to the effecting of all this, what *particular proviſion* is made? Why, *Eâ de cauſâ liceat Domino Epiſcopo*, &c. *& nulli alii nec aliis, quoties per Rectorem* &c. *fuerit requiſitus, nec non abſque requiſitione ullâ de quinquennio in quinquennium ſemel, ad dictum Collegium per ſe vel ſuum Commiſſarium*, &c. *liberè accedere.* And then directs how the *Viſitation* ſhall be proceeded in. To argue, That becauſe.

becauſe ſome *general words* in the *Preamble* may ſeem not ſufficiently anſwered by the *Proviſion* made in the Body of the Statute, is to find fault with the Founder, as not having provided a Plaiſter broad enough for the Sore, which muſt therefore be ſtretch'd by Conſtruction. When an Act of Parliament recites a general inconvenience, and proceeds to Enact how it ſhall be redreſſed, the Judges in *Weſtminſter-hall* do not uſe to extend the *Purview* farther than the Law-makers have done; but leave that to the Wiſdom of future Parliaments. It was not for nothing, that the word *ſemel* was inſerted. Can it be rationally ſuppoſed, that he who gave the Biſhop leave to have *free acceſs* to the College *once* in five years, *ea de cauſa*, that the Statutes and Ordinances thereof might be duly obſerved, would, if he had been asked the queſtion, Whether he might come oftener? have anſwered, Yes, he may come as oft as he pleaſes? He that ty'd up the requiſition to be made by the *Rector*, or, in his abſence, by the *Subrector*, and four other ſenior Fellows *at leaſt*, (*& quatuor alios* ad minus *ex ſeptem maximè ſenioribus*) would he, if he had been asked, Whether he might come upon the complaint of any particular Scholar? have anſwered, Yes, upon application made to him by any Member of the College; or without ſuch application, if he pleaſe himſelf? The Author would make a diſtinction betwixt a *Viſitation* of the whole College, and ſome other more particular *Viſitation*, or the Biſhop's coming to ſet ſome one Controverſie ſtreight: But the Statute *de Viſitatione*, which is the Law that empowers him to come at all, gives him no other Authority than to come and *Viſit the College*; and that no oftner than as aforeſaid.

If his coming upon a particular occaſion, without making what the Author calls *a general and ſolemn Viſitation*, ſhall not bar him from coming again within *five years*, then he may come when he pleaſes, *Viſit* as oft as he liſt; and whereas the *General Viſitation* is ty'd up to *three days*, he may make his *particular Viſitations* hold *five years* apiece, and the College at that rate might never be rid of him. At that rate, the word *ſemel*, and the requeſt of *quatuor ad minus*, &c. were vainly inſerted.

The ſuppoſed *Combination of the Majority of the Seniors*, is but a ſuppoſition, and will therefore be beſt anſwer'd by another ſuppoſition; *viz.* If the *Viſitor* come oftner than the Statutes direct, and when he is not requeſted by the perſons who only have Authority to requeſt him; he may combine with ſome reſtleſs and turbulent Spirits in the College, with Criminals, and ſuch as cannot be ſafe under a good Diſcipline, to break in upon the Statutes; he may aſſume an Authority to undo whatever the *Rector* and *ſenior Fellows* have done for the good of the Houſe; inſtead of taking care that the Statutes and Ordinances be firmly obſerv'd, he may liſten to the Advice of a *Civilian*, who may furniſh him with Diſtinctions

to

to overthrow them; and these Proceedings of his may come to be justified by a *young Lawyer* in Print, which may work in some unwary Heads a belief that all's well and statutable, when by this means the College is brought into Confusion.

The fourth Reason is; *The Visitor was upon like reasons limited to a* Quinquennial, *as a Bishop to a* Triennial Visitation; viz. *to prevent the Charge of* Proxies *and* Sportulage: *and therefore as a Bishop, when barr'd from solemn and costly Visitations, is not restrain'd from exercising the Ordinary Acts of Jurisdiction; so neither during the* Quinquennial *Term does the Visitor's Power cease.*

That the Visitor was limited upon like reasons that a Bishop was, is *gratis dictum*; but the difference is this, and it is very plain: The Bishop has an *Ordinary Jurisdiction* by Law all over his Diocese, and had before the *Canon* concerning *Triennial Visitations* was made. But the *Visitor* has no Jurisdiction nor Power at all, but by the Statutes of the College; They create his Authority, and antecedent to them he has none; and therefore what degree of Power they invest him with, that he has, and no more. And therefore his Power during the *quinquennial Term*, is a *Chimera*, a *fancy*: the Government of the College during all that time is lodg'd elsewhere; and any application made to him to concern himself in it, is null and void, unless made by the *Rector* and *Four at least* of the seven *senior Fellows*.

Upon the whole then, I hope, it appears by what has been said, That Mr. *Colmer* had no grievance done him; That if he had, he had no liberty of *Appealing*; That the Bishop of *Exeter*, neither as Ordinary nor otherwise, is Judge of *Appeals*: and ought not in Justice to have received his.

The Author of the Account, entitles his Second Section, *Concerning the proceeding of the Bishop and his Commissary upon the Appeal.* §. 2.

Upon which Subject, I shall not much insist: for if the *Appeal* it self was unlawful, All that was done pursuant to it, is so too. He takes some pains to free the *Bishop* from any imputation of partiality to Mr. *Colmer*. I Charge him with none. I only argue against his Jurisdiction. He quarrels with the *Rector* for denying the Jurisdiction of the Court; when all that the *Rector* and *Fellows* did, was only to tender a Protestation against the Commissaries intermedling with Mr. *Colmer*'s Case. They submitted to him as the *Visitors Commissary*, and desired him to proceed *ad alia Visitationis negotia*. He relates some extravagant Expressions of the *Rectors*, which were never said by him; all that he said like it, amounting to no more than this, That from censures inflicted within the College, no Redress was to be sought elsewhere.

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The two Protestations tender'd at that time, are transcribed and inserted at the end of this Discourse, to rectifie some mistakes that the Author has committed, relating to this business.

I pass by also what he says concerning the Vice-Chancellor's having no Title to the Cognizance of this cause; the Question not being here, whether the Vice-Chancellor have, or no? But whether the Visitor?

What follows, is declamation.

§ 3. The third Section concerns *the Offences of the Rector and others, which oblig'd the Visitor to make his Solemn and General Visitation.*

The first Offence that he alledges, is, That as soon as Mr. *Colmer* was reinstated by the Commissary, he was, immediately after his departure, again Expell'd, or rather Disown'd by the *Rector*. For the Justice of this second *Sentence*, I refer to the Relation given of it before, and the Depositions that were taken in the Cause.

Pag. 12. The only Objection made against this Second Sentence of Expulsion, is, that either Mr. *Colmer* was now a *Fellow* or not; If a *Fellow*, why disavowed? If not, how could he fall under the *Rector*'s Jurisdiction? He was not a *Rightful Fellow*, because expelled by those that had power to expel him, and for an Offence that merits Expulsion by the Statute. But he was a *Pretended Fellow*, because restored by the *Commissary*, who exercised a pretended Authority therein. His Name was writ in the Book again, he kept his Chamber and his Place in the Hall and Chappel. He pretended himself to be a Fellow, and consequently subjected himself to the Government of the College. The Rector would not have claimed any Jurisdiction over him, if he would have laid no claim to his Fellowship: But by so doing, he subjected himself to the Jurisdiction of the Statute; so that Mr. *Colmer*, at least by his own admittance, must be bound by this Second Sentence, because by claiming his Fellowship, he own'd the Rector's Authority.

Pag. 12. But *there is no Statute provided for the Expulsion of Intruders and pretended Fellows.* There is a Statute provided for the Expulsion of Fellows; and a man may be a Fellow, that has not a good Title to his Fellowship. Officers *de Facto* are liable to the same Penalties for undue executing of their Offices; that Officers *de Jure* are. If a *meer Lay-man* be inducted into a Benefice, he is, whilst he continues in possession, a Parson *de Facto*; he is equally subject to his Ordinary, as if he were a Clerk. A Gaoler *de facto* shall answer for Escapes. Nay, and we find a difference made betwixt an Officer that has a *colour of Right*, and one that has not so much as that. Mr. *Colmer* had a colour to claim his Fellowship, because reinstated by the Visitor's *Commissary*, who had a Jurisdiction in the College by the Statute, and claim'd the Cognizance of Mr. *Colmer*'s Cause: So that

Cr. Eliz. 775. Hales Plac. Cor. 114. Moor 112. n. 252.

that he was at leaſt a *pretended Fellow*, or a *Fellow de facto*, and therefore ſubject to the Laws of the Society.

The other Crimes that he reckons up, are perſonal to the *Rector*; with which the world has, or will receive ſatisfaction, that he is unworthily aſpers'd.

The fourth Section concerns the *Viſitation* it ſelf, the Evidence there given, and the Sentences there pronounced. § 4.

In this Part, the firſt particular to be diſcourſed of, is, the ground upon which the *Rector* and *Fellows* proteſted againſt the Biſhop's *Viſiting* at that time; *viz.* becauſe Dr. *Maſters*, by a Commiſſion from the Biſhop, had lately exercis'd Acts of Juriſdiction and Viſitation in the College; and that therefore within the Term of five years, which was not yet expir'd, his Lordſhip was barr'd from any other *Viſitation*.

The Queſtion then is, Whether Dr. *Maſters*'s coming and acting as he did, was a *Viſitation* within the intention of the Statute *de Viſitatione*, or not?

That it was, may be argued, 1. Becauſe the Grant of Licenſe to the Biſhop of *Exeter* to *Viſit* the College, is expreſt in theſe words; *viz. Liceat Domino Epiſcopo*, &c. *abſque requiſitione ullâ de quinquennio in quinquennium, ſemel ad dictum Collegium, per ſe, vel ſuum Commiſſarium*, &c. *libere accedere*, &c. 'Tis not mention'd, whether to *Viſit* the Whole, or a Part; whether to make a *general* Enquiry of matters relating to the *Statutes*, or only ſome one or more. Only the *Viſitor* is empowered to come in perſon, or ſend his Commiſſary, upon what occaſion ſoever, *once* in *five years*, and muſt have *liberum acceſſum*. They may freely come, and exerciſe their Power of *Viſiting*. The Biſhop has Authority, when he ſo comes or ſends, *ſuper omnibus & ſingulis particulis & Articulis in dictis Statutis contentis*, &c. *Rectorem, Scholares & Electos interrogare & inquirere*, &c. But if he does not think fit, or find no occaſion to make a *general* Viſitation, may he not confine himſelf, or reſtrain his Commiſſary to *ſome particulars? Cui licet quod majus eſt, ei licet & quod minus. Et Omne majus continet in ſe minus.* But whatever Power he exerts, whether *generally*, or but in a *particular* Caſe, proceeds from him as *Viſitor*, becauſe he has no Authority within or over the College, in any other capacity; nor can exerciſe any act of Juriſdiction, but at the times appointed by the Statutes for his Viſitation. Now, Dr. *Maſters* did *libere accedere*, and made uſe of the Viſitor's Authority in ſeveral Acts. He ſet up a Citation, ſummon'd the Rector and Fellows, call'd over their Names, adjourn'd from time to time, and from one place in the College to another; ſentenced a Fellow to be reſtor'd, awarded him Coſts, and wrote his Name in the Book.

And what tho his Proceedings, in taking cognizance of Mr. *Colmer*'s Cause, were illegal, and therefore protested against by the College? Does a Visitor's stretching his Authority beyond its bounds, make his Visitation therefore stand for nothing? At that rate, he may do as many Illegal Acts as he will; and the Wisdom of the Founder, in composing this *Statute of Visitation*, consists only in tying him up from doing the College any good, and looking to the due execution of their Statutes oftner than once in five years.

2. The Commission by which Dr. *Masters* acted, was granted by the Bishop, by virtue of that Clause in the Statute that gives him leave to come or send his Deputy to *Visit*.

3. The Bishop stiles himself in the Commission, *Jonathan Providentiâ Divinâ Exon Episcopus, Collegii Exon in Academiâ Oxon Patronus & Visitator*: So that he conceived himself entitled to make out such a Commission no otherwise than as he was Visitor. And as such, Mr. *Colmer* had appeal'd to him. *Ad nos Exon. Episcopum prædictum & Collegii Exonienfis memorati Visitatorem legitimum ritè & legitimè appellaverit.*

4. That the Commissary did visit, may be inferred from the Notion of a Visitation, which the Author himself has given us; and we may presume it comes from Dr. *Bouchier*: The Nature of a Visitation, says he, is a voluntary Enquiry into matters Criminal, and Correction thereupon. Now, Dr. *Masters*'s coming was voluntary; he came at no request: (unless Mr. *Colmer*'s Appeal must stand for a Request). And he was to enquire into matters Criminal; *viz.* Whether Mr. *Colmer* were guilty of *Incontinence? Ad cognoscendum & discutiendum hujusmodi causam appellationis, totumque negotium principale cum suis incidentibus, emergentibus, dependentibus, annexis & connexis quibuscunque. Et ad audiendum hinc inde proposita & proponenda & ad probationes admittendum.* He was likewise to enquire, Whether the *Rector* and *Fellows* had done Injustice in expelling him? And that *Correction* was to follow upon this Enquiry, is manifest: For if the person that had been censured, should have been found a Criminal, the Punishment of Expulsion was to have been entirely inflicted. For upon Mr. *Colmer*'s *Appeal*, the Bishop had granted an *Inhibition*, by which it was intended he should remain in possession till the re-hearing of his Cause.

That Dr. *Masters*'s coming was really a *Visitation*, is so clear, that the Author is forc'd to have recourse to a distinction betwixt a *general* and a *particular Visitation*; and therefore calls that of the Bishop in person, *a solemn and general Visitation*. But all we desire is, to have Dr. *Masters* his coming, and acting as he did, stand for a Visitation; be it general or particular, it is all one to us: The Statutes make no difference; they give way to no Visitation at all, without requisition, more than once in five years.

And

And that a *Viſitor*'s exerting any act of Juriſdiction within a *College*, when he has no Authority but as *Viſitor*, has been accounted a *Viſitation*, may appear by what hapned in another *College* in *Oxford* not many years ſince, where Dr. *Morley*, late Biſhop of *Winchester*, was their Viſitor, and confin'd, as the Biſhops of *Exeter* are in our Caſe, to a *quinquennial Viſitation*. That Biſhop muſt be allowed to underſtand the extent of his Authority as well as another, and equally concern'd to ſupport it: yet when a Member of the *College*, that had been debarr'd of a *Fellowſhip*, carried a complaint to him as *Viſitor*, he refuſed to take cognizance of it, becauſe five years were not elaps'd ſince his laſt Viſitation. And tho he did it afterward, he was empower'd by a *Royal Commiſſion*; ſo that he was not ſenſible of any Juriſdiction that he had, as *Ordinary*, to receive the *Appeal*; and conceiv'd his coming or ſending to determine it by his own Authority, as Viſitor, to be as much a Viſitation, as what the Author calls *a ſolemn and general Viſitation*; or at leaſt concluded, that the Statutes by which he was empowered to *Viſit* but *once* in *five years*, debarr'd him from taking any Judicial Cognizance of the Affairs of the *College* at other times.

But the Biſhop of *Exeter* had power to receive and determine this Appeal as *Ordinary*. *Objp.* 28.

This is a new Doctrine, never heard of in the *College* before, nor perhaps ever thought on till of late. That he was apply'd to by Mr. *Colmer*, as *Viſitor*, and granted Dr. *Maſters* his Commiſſion as ſuch, and that Dr. *Maſters* was receiv'd by the *College* as the *Viſitor*'s *Commiſſary*, has been obſerved already; to which may be added, that the word *Ordinarius* is not ſo much as in the Commiſſion: nay, and that he acted as ſuch, by complying with the Statute *de Viſitatione*, in not adjourning his Commiſſion beyond the three days limited by the *Statute*, has been opened in the Narrative. But when the Biſhop was reſolved, upon Mr. *Colmer*'s ſecond Expulſion, to come himſelf, then was this Invention ſet on foot, That the determining an *Appeal*, was no Viſitation, becauſe the Commiſſion was reſtrain'd to the hearing and determining that Cauſe only: and he might receive an *Appeal*, as *Ordinary*. *Ibid.*

This is the next fallacy that the Author goes upon; and which has as little appearance of Law and Reaſon, as any of the reſt. For how comes the Biſhop of *Exeter* to have *Epiſcopal* Juriſdiction over the Members of *Exeter College*? The Juriſdictions of Biſhops are circumſcrib'd within the limits of their ſeveral Dioceſes; which bounds are ſet to them, either by poſitive Laws in being, or by immemorial Cuſtom, which preſuppoſeth a Law. And they are not only bounded as to Place, but with reſpect to the ſubject-matter of their Juriſdiction; *viz.* the Cauſes that fall under

their *Cognizance*. Where an Act of Parliament or a Canon, received and submitted to as a Law of this Nation, does not empower a Bishop to hold Plea, there he has no Authority; and if a Bishop breaks this boundary, and invades the conusance of Causes that are not what the Law calls *Spiritual*, because submitted to the Jurisdiction of the *Ecclesiastical Courts*, he incurs the Penalty of an old Statute, that of *Præmuniri*.

The *College* being a *College of Divines*, and the *Visitor* an *Ecclesiastical Person*, has, it seems, with the help of some misapplied words in the Statutes, *Ordinarius Visitator*, and *per censuras*, help'd the Doctor and the Author to dress up a Notion of *Episcopal Jurisdiction* in this Case: whereas the Bishop's Authority is wholly conferr'd upon him by the Statutes, and as *Visitor* only; and the Visitation of a College, by virtue of a Right derived from the *Founder*, let who will be entitled to it, is an act of *Temporal* Jurisdiction, because the Founding of a College, and giving them Laws for the good Government of the Society, is a meer Temporal Act, which a Temporal Lord is as capable of, as a Spiritual: and such *Temporal* Lord, or other *Lay* person, may equally exercise all Jurisdictions whatsoever that a *Founder* may reserve to himself, or confer upon another.

This invading of *Temporal* Rights, under a pretence of *Ecclesiastical* Authority, and particularly invading and encroaching upon the *Temporal* Rights of *Founders*, occasioned that remarkable Statute of *Provisions* made in the 25th year of the Reign of K. *Edward* III. in which the King, Lords and Commons entitle themselves to their *Temporal* Rights, such as the *Custody of Voidances*, *Presentments*, *Collations*, &c. as *Lords and Advowees*; and declare against *disturbances of free Elections*, &c. as being *against the good disposition and will of the first Founders*. The same will appear by perusing the other Statutes against *Provisors*. All the *Rights* of a Founder, belonging to him as such, are recoverable by the Common-Law of the Realm; and, if controverted, are determinable by That, and That only. The Right of *Visitation* is one of them, when reserv'd to the *Founder*, or by him settled upon, or invested in any other person: whoever is entitled to it, derives his Title from him; and it is a *Temporal* Right. For a *Visitor*, because himself falls out to be an *Ecclesiastical Person*, to apply *Ecclesiastical Censures* upon such an occasion, is as proper, as if a Bishop should *Excommunicate* his Tenant for not paying his Rent, or his Servant for not performing the Duty of his place.

Ann. 3 & 4 *Eliz.* *Coveney* President of *Magdalen-College* in *Oxford*, appeal'd to the Queen in *Chancery*, from a Sentence of Deprivation given by the Bishop of *Winchester*, Founder and Visitor of that College: The discussing of which Appeal was committed to Justice *Brown* and Justice *Weston*; who, after divers Conferences with the Civilians, resolved, That the

the Appeal did not lie; for that this Cauſe was out of the Statutes of 24 & 25 *Hen.* 8. Nor did he obſerve the Order of the Statutes, (*i. e.* he ought not to have appeal'd to the Queen from the Sentence of the Biſhop, but (if the Cauſe had belonged to Eccleſiaſtical Conuzance) the Appeal ought to have been from the *Biſhop* to the *Archbiſhop*, and from Him to the *Queen*). And this matter of *Deprivation* was meerly *Temporal*, and as by a *Lay-Patron*. *Ex hoc ſequitur* (ſays the Book) That if the Preſident be Expell'd, he may have an *Aſſize*, or other Action at *Common-Law*; *per que*, &c. *Dyer fol.* 209. *a.* This is an Authority in point, That the Viſitation of a College, by a Founder or his Succeſſor, is a matter of meer Temporal Right.

Nor do the words in the Statutes that are laid hold on, warrant any ſuch Inference as is made from them. That of *Ordinarius Viſitator* does not deſerve an Anſwer. Nor muſt the words *per Cenſuras* needs be underſtood ſo as to give the Viſitor the Juriſdiction of an *Ordinary*. It is not ſaid, *per Cenſuras Eccleſiaſticas*; nor if it had been expreſs'd ſo, would it have prov'd the Point; ſince an Archdeacon may inflict *Eccleſiaſtical Cenſures*. The word *Cenſura* ſignifies no more than a Penalty, and ſometimes leſs, a Rebuke, a Reprehenſion. The late Act of *Convocation* at *Oxford* is called *Cenſura*, tho it proceeded from no Eccleſiaſtical Authority. When a man is ſaid to have been *cenſur'd* in the *Star-Chamber*, no body underſtands the meaning to be, That that Court *Excommunicated* him: It may with as much reaſon be pretended, That where ever the word *Judex* is uſed, *Judex Eccleſiaſticus* muſt be underſtood, as that the word *Cenſura* muſt of neceſſity import *Eccleſiaſtical Cenſures*. But if the Statute had been full in it, and that *Eccleſiaſtical Cenſures* had been expreſs'd, yet the Biſhop's Title to his *Epiſcopal Juriſdiction* there, would have been never a whit the better. For how can the private Statutes of a College bring any Crime whatſoever within the laſh of *Excommunication*, for which a perſon is not by the Law of the Realm liable to that Cenſure? A *Founder* of a College may direct, That if I will enjoy the fruit of his Benefaction, I ſhall conform to the Orders, and ſubmit to the Diſcipline of the Society: But he can no more ſubject me to *Excommunication* for breaking his Statutes, than to loſs of Life or Limb, or of my private Eſtate. I hold not them of him, nor enjoy them by any Right or Title derived from him.

So that if this College were ſcituate within the Dioceſe of *Exeter*, yet the Members thereof would not, as ſuch, be ſubject to him, as Biſhop; nor would Offences againſt their Statutes bring them under his *Epiſcopal Power*, becauſe his Juriſdiction over them, as *Viſitor*, is a *Temporal Juriſdiction*; and his general Juriſdiction over the whole Dioceſe, as *Ordinary*, is of quite another nature. And *quando duo Jura concurrunt in unâ perſonâ, æquum eſt ac ſi eſſent in diverſis.*

Beſides

Besides all this, no Instance can be found by traditionary Report, or the Monuments of the College, that ever any former Bishop of *Exeter* exercised a Spiritual Jurisdiction over *Exeter-College*, or any Member of it; or did ever, in any *Instruments* of theirs to the College, assume that Name, or in any wise claim the Authority implied in it: and yet the College is of near 400 years standing.

But whereas the Author tells us, p. 37. *That this, as all other* Colleges *in* Oxford, *being exempt from* Episcopal *and* Metropolitical *Jurisdiction, is immediately subject to the* Ecclesiastical *Jurisdiction of the* Visitor, *if he be a Person competent and fit to exercise such Authority:* he must mean, if he mean any thing, That whatever Authority a *Bishop* has, the Persons that are subject to such Authority, are subject to his *Ecclesiastical* Jurisdiction; and then if a Bishop be Lord of a Mannor within his Diocese, or, at least, in a place exempt, he, being a Person competent and fit to exercise such Authority, may *Excommunicate* his Tenants for not appearing at his Court, and performing the Services incident to their Tenures. A *Bishop* that is *Chancellor*, for Example, or *Justice of Peace*, may *Excommunicate* Suitors and Offenders, and enforce his Orders by *Ecclesiastical Censures*. This is every whit as rational, as that a Bishop, being a *Visitor of a College*, &c. should take his *Episcopal* Authority along with him when he goes to Visit; the *Visitation of a College* being an act of *Temporal* Jurisdiction, as much as any of the rest.

But *the* Colleges *in* Oxford *are exempt from* Episcopal *and* Metropolitical *Jurisdiction, and therefore they must be subject to the* Ecclesiastical *Jurisdiction of their* Visitor, *if a Person competent*, &c. What will become then of those Colleges, whose Visitors are of the Laity? must they be subject to no Ecclesiastical Jurisdiction at all? Yes; both are subject to the Ecclesiastical Jurisdiction belonging to the University; which being now legally exempted from the Jurisdiction of any Bishop or Archbishop, the Chancellor of the University, who was formerly always an *Ecclesiastick*, had the Jurisdiction transferred to him. And since of later-times Lay-men of higher Rank have been elected into that Office, the Statutes have provided, That the *Vice-Chancellor*, who is to execute the Powers, be a Person in *Holy Orders*. So that there is no necessity to invest the Visitor with Episcopal Jurisdiction, because the University is exempt from that of the Bishop of the Diocese, or Archbishop of the Province.

Nor was this College, for ought we can be inform'd of, ever reputed to be within the Diocese, or belonging to the Diocese of *Exeter*. It was anciently within that of *Lincoln*, and has since been exempted, together with the rest of the University; but not subjected to that of *Exeter*, nor

nor of any other Bishop whatsoever. It is set free *ab omni Jurisdictione, Dominio vel Potestate quorumcunque Archiepiscoporum, necnon Episcoporum & aliorum Ordinariorum:* These are the words. And this Exemption reaches to every particular College, and every Member of every College; and has been always maintained accordingly, and strictly insisted upon by the University: particularly, in that famous Controversie, *Temp. Rich.* 2. when Archbishop *Arundel* pretended a Right of Visitation there; and again in K. *Charles* I.'s time, when *Laud* was Archbishop. But yet we cannot think we are beholden to this Exemption, for our being free from the Episcopal Jurisdiction of the Bishops of *Exeter*; forasmuch as the College was never subject to them as Ordinaries, and cannot therefore properly be said to be exempted from a Jurisdiction that never had a being.

Nor can the *Founder* be suppos'd to have had it in his thoughts to cloath the Visitor with such an Universality of Jurisdiction as is contended for: If that had been his intention, or if he had thought it implied in the word *Ordinarius*, he would not have restrain'd him as he has done; He can exercise no Jurisdiction, but at times of Visitation; he cannot Visit, but *once* in *five years*, unless *requested* by the College; and when he comes, his Visitation can last no longer than two or three days at most. He cannot expel a Scholar, without the consent of the Rector and Three of the seven senior Fellows, *tunc in Universitate præsentium*; nor the Rector, without the consent *quatuor ex septem maximè senioribus supradictis*; that is, *tunc in Universitate præsentibus*; nor can he inflict any Punishment at all; but *secundum exigentiam Statutorum.* To which may be added, That the Visitor can put no sense of his own upon the Statutes that shall be binding, but upon request made to him by the Rector and the major part of the Fellows. Vid. *Stat. de Admiss. Scholar. Item, interpretationibus, injunctionibus, declarationibus & expositionibus per Reverendos in Christo Patres Successores primi & originalis Fundatoris nostri Episcopos, super dubiis Statutorum emergentibus, ad eosdem Episcopos ex consensu Rectoris & majoris partis Scholarium delatis, faciendis, obediam.*

Since therefore the Bishop of *Exeter* has no Jurisdicton, as *Ordinary*, within *Exeter-College*, and has really incurr'd a *Præmunire* for acting as such, it is consequential thereupon, That whatever he has done as such, is illegal, and, the cause arising out of his Diocese, void in Law. There is an end then of his *Excommunications*, and of his Suspention *ab Officio & Beneficio.* And his declaring Dr. *H.*'s place void, (which is, in effect, an *Amotion*) and depriving the *Rector*, without the concurrence of such of the Society as the Statute requires to consent to such Acts of the Visitor, was such a *Declaration* and *Deprivation* as the *Statutes* §. 2.

tutes do not warrant: For these he did as Visitor. And the *Rector* and five at least of the Seven *maxime seniorum* were *present in the University*, so that their Concurrence might have been had: But *the Concurrence of Seniors to all Pub-*
Acc. p. 36. *lick Acts, is always understood to mean the consent of those that are the most senior of those that are present (true present in the University*, as these were) *and he that by his own Crime incapacitates himself from performing any Acts of his place, is by the Rules of Law and Reason reputed as absent. And it would be absurd in expelling a Rector, to require the consent of those Fellows that are* participes Criminis, *and are by the Visitor himself for that Contempt suspended* ab Officio, *&c.* This is begging the Question. And, whether it were a Crime or Contempt to oppose and protest against the Bishop's Visiting at that time, is yet *sub Judice*. And if it were a contempt, the Bishop, at least, was no proper Judge of it. For since he could not exert all the Powers of Visitation without their Concurrence, and they protested against his power to visit then, and insisted upon it, as a matter of *Right* that they were not obliged to appear; the Bishop ought not to have proceeded in his Visitation till this Difference between him and them had been determined. He petitioned the Councel indeed, and they left him to the *Usual course of Law*. But instead of taking that Course, he makes himself Judge in his own Cause; and since he could not amove them one by one as Visitor, because that could not be done without the Concurrence of the *Rector*, he having two strings to his Bow, betakes himself to his *Episcopal Jurisdiction*, and suspends them *ab Officio & Beneficio* by whole-sale.

The *course of Law*, which he might have taken, and would have done, if the Peace and Quiet of the College had been so much his care, as the asserting his own double-fac'd Jurisdiction, and perhaps revenging some pretended Affronts, is this; He might have had a *Mandamus* out of the Court of *King's Bench*, directed to the *Rector, &c. of Exeter College*, to command them to receive him as *Visitor*, and to submit to him as such. Upon the return of which Writ, the College might have shown cause why they did not. By this means the matter would have been fairly and judicially determined by a proper Court; in whose judgment all parties would have been compellable to acquiesce. But instead of this, the Bishop, who in this Controversy concerning his Right to Visit at that time, was but a party, makes himself a Judge in his own Cause: Which is so contrary to common sense, that we read in our Books, that even *an Act of Parliament made against natural Equity, as to make a man Judge in his own Cause, would be void in it self*, for *Jura naturæ sunt immutabilia*. Hob. 87. 8 Co. 118.

This

This Suſpenſion therefore of the Seniors *ab Officio & Beneficio* being done by the *Biſhop* as *Ordinary*, where he had not the leaſt pretence to the Juriſdiction of an *Ordinary*, and he in pronouncing it, having made himſelf a Judg in his own Cauſe, was in it ſelf a Nullity, and the *Rector* and *Fellows* ſo Suſpended were not in the leaſt incapacitated thereby; and conſequently his declaring Dr. *H*'s place void [without the Concurrence of the *Rector* and Three of the *maximè Seniores*, then *preſent in the Univerſity*] was a void Declaration, and not warranted by the *Statutes*. And his Deprivation of the *Rector* afterwards, without the conſent of Four of thoſe *Seniors*, was void in like manner.

I muſt take notice here by the by, That this *Suſpenſion* of a Fellow *ab Officio*, is a thing not warranted by the Statutes at all; *Expulſion* and *College-Cenſures* (*viz.* turning out of *Commons*, and with-holding their Profits for a time) we know, and admit of: but a Suſpenſion *ab Officio* is intended to diſable them from performing their Duty, as Fellows; which they being ſworn to, how can the *Viſitor* ſuſpend them, unleſs he could diſpenſe with their Oaths? or that he were expreſly empower'd by ſome Statutes of the College ſo to ſuſpend them? And then indeed the Obligaiion of their *Oaths* would conſequentially ceaſe during ſuch *Suſpenſion*.

Again, as they are ſworn to *officiate*, ſo they are liable to *Expulſion* if they do not give their Votes, *&c.* when required; Vid. *Stat. de Electione Rectoris*, &c. and conſequently, they cannot ſubmit to this *Suſpenſion*, without hazarding *Expulſion*.

A Biſhop's ſuſpending *ab Officio* within his Dioceſe, cannot be argued from in this Caſe: For there he *ſuſpends* from that Office or Cure which Himſelf or his Predeceſſors conferred; and it is his own Cure, as well as the *Incumbent*'s; and he has Power, and does accordingly appoint another to ſupply it: whereas this Suſpenſion is from an Office that he neither did nor could confer; nor has he Power to appoint another. And therefore his ſuſpending the Fellows *ab Officio*, and not having Power to ſubſtitute others in their rooms, has actually put the College into a ſtate of Diſtraction and Confuſion; nor is there, in effect, or indeed can be, any ſuch thing as good Government in it, till theſe Irregularities are redreſſed.

But beſides this, there are ſeveral other things, both in Dr. *H*.'s and the *Rector*'s Caſe, that ſhew the Injuſtice of his Lordſhip's Proceedings againſt them.

Pag. 34. As for Dr. *H.* it is pretended, *That his Benefice is wholly incompatible with his Fellowship. The Condition of his Parsonage is, That he shall reside upon it four parts in five in the year; and the Condition of his Fellowship is, That he shall not be absent from his College above fifty days. All Livings rated above* 8 l. per Annum, *in any publick Records, are inconsistent with a Fellowship; and upon this,* 100 l. *are setled by Act of Parliament,* &c.

This is what is urged. In the first place, this very Question, Whether Dr. *H.* by accepting St. *Anne*'s Living, had lost his Fellowship, was Statutably determined two years before? The *Rector*, in the year 1688. declared, That he thought himself bound to pronounce the *Doctor*'s place void by *Cession*, as inconsistent with his Benefice, on the Statute *de Promotione*, &c. and that he would do it, if it were not forthwith Statutably decided. The Doctor hereupon desired, That *(by consent of the Society)* it might be referred to the Visitor. But the *Rector* thought it more agreeable to the Statutes, and more easie to refer it to the Vice-Chancellor. And the Doctor's * Councel being consulted, declared likewise, That the Vice-Chancellor was the sole proper Judge in that Case. Whereupon the matter was brought before him, who upon a full hearing of both sides, declared his Judgment, That the said *Benefice* and *Fellowship* were *consistent*, according to the *plain, literal sense of the Statutes*, which (as has been said) the *Rector* and *Fellows* are sworn to observe; and therefore that the Rector could not declare the Doctor's Place void. Upon which, the *Rector* desisted and acquiesced, being sworn to stand to the *Vice-Chancellor*'s determination in that Case; vid. *Stat. de Juramento Rectoris.* This is the Scandal which the Bishop thought fit to take off from the College, as the Author terms it. And indeed there needs no more be said upon this matter, but that having once been Statutably determined, it ought not to have been moved again.

*Who was no other than Dr. *Bouchier*.

But to take off the false Glosses, whereby the *Author* has imposed upon himself, and may upon others in this matter, I will endeavour to set the Case in its true light.

By the Statute *de Promotione*, &c. it is provided, That *si aliquis Scholaris*, &c. *uxorem duxerit, aut Matrimonium vel sponsalia contraxerit, aut alicui obsequio, officio aut exercitio, per quod à Studio in Universitate Oxon' ultrà unum mensem in Anno, preter quinquaginta dies superius in Statuto de Exitu ab Universitate*, &c. *pre-exceptos, impediatur, se commiserit:* That then *immediatè postquàm aliquod istorum Rectori*, &c. *cognitum fuerit, omnes jus & Titulum*, &c. *amittat.*

Now the acceptance of an *Ecclesiastical Benefice* cannot be supposed to be comprehended within this clause; 1. Because it is not in propriety of speech, either an *Obsequium*, *Officium*, or *Exercitium:* There are many other

other Imployments that fall naturally under thoſe denominations; and therefore the words of the *Stat.* abundantly ſatisfied without taking in *Eccleſiaſtical Benefices*. 2. Becauſe the accepting of an *Eccleſiaſtical Benefice* cannot hinder a Fellow of a *College* from abiding in the Univerſity, and following his Study there; foraſmuch as Scholars in either Univerſity abiding there for their Study, are expreſly excepted out of the *Stat.* of 21 *Hen.* 8. againſt *Non-reſidents*. 3. Becauſe although abſence from the College for longer than a Month, and Fifty days make a *Ceſſion*, in caſe of acceptance of an *Officium*, *Obſequium*, &c. yet in caſe of an *Eccleſiaſtical Benefice*, a years abſence is allowed by the ſame *Statute*. And 4. Becauſe when the *Statute* provides in what caſe the Acceptance of an *Eccleſiaſtical Benefice* ſhall be a *Ceſſion*, and in what not, regard is had to the *value* only, nor barely to the true intrinſick value neither, but to an eſtimated value, as taxed *in publicis Regiiſve monumentis*. Which the *Author* very unfaithfully tranſlates *in any Publick Records*: Whereas, if the words were ſo to be underſtood, it would make ſtrange havock in both *Univerſities*; for whereas there are now many *Benefices* always reputed conſiſtent with *Fellowſhips*, becauſe under 8 *l. per Annum* in the *King's Books*, though to the extended value of 100 *l. per Annum*, and ſo rated and returned upon the *Act* of *Twelve pence per Pound*; all theſe would, according to the *Author's* novel Interpretation, be inconſiſtent with *Fellowſhips*; and the Statutes of *Exeter-College*, as well as many others, would very imprudently have made that diſtinction betwixt *Benefices conſiſtent* and *inconſiſtent*; ſince, at this rate, hardly a *Benefice* in *England* would be found to be *conſiſtent*. I call it a novel Intepretation, becauſe it really is ſo; the words *publicis Regiiſve* having always, both in this and other *Colleges* been taken to be *ſynonymous*, and the one *explanatory* of the other; both having been underſtood of the Records of the Taxation of *Benefices* in the *Firſt-fruits Office*; which are *publica*, becauſe all perſons may have reſort to them; and *Regia*, becauſe they were made for aſcertaining the *Firſt-fruits* and *Tenths*, which were then veſted in the Crown, when theſe Records were compiled, and are therefore called the *King's Books*. And to enforce this meaning, than which none but Cavillers would have thought of any other; it may be further obſerv'd, that the word of the *Statute* is *Taxatum*; which looks backward, and can have no reference to a Private Act of Parliament made above a Hundred years afterwards. Beſides that, St. *Ann's Living* cannot be ſaid to be *taxed* at a Hundred pounds a year; for it is the Pariſh that by the Act of Parliament, is *taxed* to make it 100 *l.* a year.

The words must the rather be understood of the *King's Books*, because of the subject matter; which is the *consistency* or *inconsistency* of a *Fellowship* and a *Benefice*. In ascertaining which, the Statute conforms it self to the Law of the Land, by which there is a difference betwixt Livings under and over 8 *l. per annum*, as to their compatibility. And the 8 *l.* which the Law takes notice of to this purpose, is 8 *l.* in the *King's Books*, and no where else.

But (says the *Author*) *the Condition of his Parsonage is, That he shall reside upon it four parts in five of the year; and the Condition of his Fellowship is, That he shall not be absent from the College above fifty days.*

The *Stat. de Exitu Scholar. ab Universitate, &c.* does indeed mention *Fifty* days, as the utmost time allowed to be absent from the *College* upon ordinary occasions: But this clause follows, *Illis, qui propter negotii Collegii aut ex speciali causâ & gratiâ inferius in hoc statuto annotandâ absentes fuerint, in numero absentium minimè computatis.*

Now the *Gratia inferiùs annotanda* is this; *Non prohibemus tamen quin scholaribus & electis quibuscunque* ex causis promotionis ipsorum, *mortis, vel gravis infirmitatis parentum, seu precipuorum amicorum vel causis consimilibus urgentibus, per Juramentum, si opus fuerit, petentium hujusmodi licentiam in presentiâ Rectoris vel eo absente subrectoris, & majoris partis Scholarium domi existentium, affirmandis & approbandis, per eosdem concedatur certum tempus, quo abesse possint.* Here no time of absence is limitted, but the Rector and Fellows are at liberty for a cause to be approved of by themselves, to give leave for absence as long as they please, *Habito respectu ad causas, personas, intervalla locorum & circumstantias hujusmodi.*

So that a *Fellowship* has no such condition annex'd to it, as the *Author* tells us it has. A Fellow indeed must not be absent above *Fifty* days without leave; but with leave he may be absent *Five Hundred.*

It is to be observ'd too, That *causa Promotionis* is one of the weighty Causes for which the Statute allows *a Licence* for absence to be obtain'd, without restraining it to any certain time. Which word I understand not, if this be not its meaning, Where a Fellow is in hopes of, or is advanced to a preferment, that does not make a Cession expresly within the Statute *de Promotione & causis deserendi, &c.* In such case he may have leave from the House to be absent as long as they think fit to give leave.

To which may be added, another consideration, which perhaps is peculiar to this case of Dr. *H.* and has a considerable influence upon the merits of it.

(Says

(Says the *Author*) *The Condition of his Parſonage is, That he ſhall reſide upon it four parts in five of the year:* There is ſuch a Clauſe in the Stat. of 30 *Car.* 2. But the *Author* ought likewiſe to have conſidered, that by the Act of 1 *Jac.* 2. The Rector is to have a Houſe built at the charge of the Pariſh.

And be it further enacted, That the ſaid Commiſſioners, or any Seven of them, ſhall within thirty Days after their Conſtitution make, or cauſe to be made an eſtimate in Writing under the Hands of ſome ſufficient Perſon or Perſons, qualified for the ſame, of the Charge of Building and Finiſhing the ſaid Church and Steeple, and a Houſe for the Rector, &c. *and equally Aſſeſs, and cauſe the ſaid to be Aſſeſſed and Levied,* &c. So that Proviſion is made for the Building, as of a Church, ſo of a Parſonage-houſe at the Charge of the Pariſh. And ſince there cannot be Legal Reſidence without a Parſonage or Vicaridge-houſe, the Duty o Reſidence enjoyned by the Act, cannot be ſuppoſed to take place till there be a Houſe built for the Rector to reſide in: Till then, not being obliged to *Reſidence*, his living is not inconſiſtent with his *Fellowſhip*, according to the Authors own Interpretation of the Statutes. Involuntary Non-reſidence, is not *Non-reſidence* within the *Stat.* of *Hen.* 8. or 13. *Eliz.* as when a Parſon is abſent by reaſon of an *Inhibition* from the *Biſhop.* And conſequently, Dr. *H*'s *Non-reſidence* not being voluntary, cannot be a Breach of the *Proviſo* in the late *Statute.* The Law is very clear, That when there is no Parſonage-houſe upon the Glebe, the Incumbent is excuſed for *Non-reſidence* till there be one; *Godolph. Repertor. Eccleſiaſticum pag.* 319, 320. *Num.* 9. *and ſo it was reſolved, Co.* 6. *Rept. in Butler and Goodale's Caſe.* And in this Caſe the Pariſh being to build the Parſonage-houſe, there is no Default nor Lacheſs in the Doctor, which might have been imputed to him, if himſelf were by the Law to build it. Now the late *Statute* cannot be ſuppoſed to enjoyn any other *Reſidence* than the Law requires; and conſequently, not till there be a Houſe built to reſide in. For the end of the Law in obliging Parſons to *Reſidence*, is maintaining of Hoſpitality, and preventing Dilapidations, as well as ſerving the Cure; neither of which can be performed where there is not a Parſonage-houſe to live in. Moor, 447 Num. 609.

So that upon the whole matter, Dr. *H*'s accepting of St. *Ann*'s Living, is not a *Ceſſion* within the Statute *de Promotione*, &c. becauſe it is not a *Benefice taxed* in the *Kings Books* at 8 *l. per Annum.*

Nor is it within the firſt Clauſe, becauſe it is not *Obſequium*, *Officium*, nor *Exercitium*, within the meaning of that Clauſe.

Nor, if it were, is he obliged to be Abſent from the College by reaſon of it, till the *Parſonage-houſe* be built, becauſe the *Proviſo* in the *Statute* cannot take place, but from that time.

What

What follows, is either Raillery, or a plain Justification of the *Doctor*, in resigning his former Living about eight or ten years ago. For if, as he acknowledges, he kept himself therein to the *Letter* of the *Statute*, then he did not *Elude*, but fully comply with the Design of the Legislator; which was, that his Statutes should be observed in the *plain*, *literal Sense*; and that if he did not like his Preferment, he should have Liberty to Resign it within that time, and keep his *Fellowship*, which was accordingly done, *sine fraude ulla & absque pensione aliqua.*

This Remark, I shall only add, (tho the Cause needs it not) That Grants of Priviledges, as well as Pardons and Restitutions, are always to be taken in the most benign and beneficial Sence; but according to the Interpretation that this Gentleman would put upon the Statutes, the priviledge in Question would dwindle into just nothing at all; and consequently, this Gentleman does very well defend the Priviledges of the University, which yet he once Swore to maintain.

Mr. *Vivian*'s Case has little in it. His Right to his *Fellowship*, depends upon his Election into Mr. *Colmer*'s place, who having been statutably expell'd, as we insist, and hope we have proved, Mr. *Vivian* was duly Elected into it.

The *Deprivation* of the *Rector* is the next and last thing to be considered.

P. 36. The *Author* tells us, The *Visitor* resolved to confine himself strictly to the methods which the *Statutes* direct in the *Deprivation* of a *Rector*. A good Resolution! but how far the Bishop deviated from it, may appear in these following Particulars.

1. Whereas by the *Statutes*, the Consent of *Four of the Seven Senior Fellows*, is necessary to the *Deprivation* of a *Rector*, his Lordship took upon him to Suspend all the Seven but Two, that he might incapacitate them to dissent from his design to Deprive him. Which is the more apparent by this, That the *Rector* was deprived for *Contumacy* in not appearing at, and owning him as having a Right then to *Visit*; which if it were a Crime, the rest of the *Fellows*, who opposed and protested against his *Visitation*, were equally guilty, and yet they are only *Suspended*. I say, The *Rector* was deprived for *Contumacy*, because no other cause of Deprivation is alledg'd in the Sentence, a fewe other Bombast-words being only mentioned in a *Parenthesis*, and supposed to express the cause of his Contumacious Absence.

2. He

2. He takes in Mr. *Colmer*, who had been expelled, and whoſe Expulſion occaſion'd all this trouble, to be one of the *Seven Seniors*, who were to ſit in Judgment upon the *Rector* that Expelled him.

3. To make it yet more Statutable, he takes in *Four* more of the *Juniors*, (who were Regiſtred by the *Rector*, as obnoxious to *Expulſion*) and by their Votes, (the two Seniors of the Seven diſſenting, and other two being preſent in the Hall, and not asked their Conſent) he proceeded to paſs Sentence of *Deprivation* againſt the *Rector*. And this exactneſs was obſerved *(ſays the Author)* becauſe the Statute expreſly requires the Conſent of four, *E ſeptem maxime ſenioribus tunc in Univerſitate preſentibus.*

No, this exactneſs was declined, becauſe if the Viſitor had confin'd himſelf to the Statutes, he could not have compaſt the *Rector's Deprivation*, becauſe he could not have the Majority of the Seniors of his ſide; and therefore it was neceſſary for him to lay them aſide, whereby he deprived the Rector of the benefit of having his proper Judges.

So that the Objection remains: They that did conſent, were not Four of the Seven *maximè ſeniores*. But that's all one: *The* Biſhop *was ſatisfied, that the* Statutes *were ſufficiently obſerved in the concurrence of thoſe that ſubſcribed to the* Deprivation, *though not the* Seniors. If the Biſhop were ſatisfied, all's well. The Reaſons of the Biſhop's ſatisfaction, have been anſwered already.

But ſuppoſing there had not been theſe Irregularities in the Manner and Method of his *Deprivation*, what was he deprived for? Why, the Sentence expreſſes it, *Propter ejus manifeſtam & multiplicem contumaciam, & circumſtantiis variis aggravatam in non ſubmittendo ſe Viſitationi noſtræ Ordinariæ, ſed contumaciter ſe abſentantem*, &c. So that he was deprived for *Contumacy*. And herein the Biſhop confined himſelf ſtrictly to the Statutes, becauſe among all the Cauſes mentioned in the Statute, *Propter quas cauſas Rector privari Officio debeat*, Contumacy is not reckon'd up as one. Nor if it had, can the *Rector's* non-appearance in the Caſe in queſtion be reputed a contumacious abſence, becauſe he inſiſted upon it as a Right not to appear. Nor was it his own ſingle Act, but that of the College, the Proteſtation having been tendred under the Seal of the College.

The Rector having been thus Illegally deprived, and his Excommunication, whereby the Viſitor enforc'd his Sentence, having by the Court of *Kings-Bench* been declared to have been pronounced Illegally, let the *New pretended Rector*, at his peril, make uſe of any violent methods to gain Poſſeſſion. To *legal* Remedies, if he thinks he has any, the Law

is

is open; which whether it be of his side or no, neither the Visitor, nor Civilians, nor his own Set of *Junior Fellows*, are to be Judges.

Thus we have gone through the merits of the Controversie now depending between the Bishop of *Exeter* and the Rector and Senior Fellows of *Exeter-College*; and it is hoped, that notwithstanding the vain Allegations, and mistaken Inferences of the *Author of the Account*, it is plainly proved, That Mr. *Colmer* was lawfully expelled both the first and the second time; That he could not by the Statutes Appeal any where; That the Visitor had no Right to receive his Appeal, as Visitor, by the Statutes of the College; and that, as *Ordinary*, he had no Right either to receive the Appeal, or to do any thing else relating to the College, or any Member of it; That Dr. *Masters* his coming was a *Visitation* within the intention of the Statutes; and therefore that the Bishop could not Visit again till *five years* were expired; That being opposed in his second Visitation, by those without whose concurrence he could not exert the Power of a Visitor, he ought not to have proceeded, till that Controversie had been setled; That he had no Authority to suspend any of the Fellows; That the voidance of Dr. *H.*'s place, was Illegal, both as to Matter and Form; and the Rector's Deprivation no better.

Copies

Copies of Mr. *Colmer's* Appeal, of the ſeveral Proteſtations of the College, both againſt the receiving it, and againſt the Biſhop's Second Viſitation; and ſome Petitions to, and Orders of Council relating to this Cauſe, are here inſerted, and are as followeth:

IN *Dei Nomine* Amen! *Coram vobis Notario Publico publicâq; & Authenticâ Perſonâ ac teſtibus fide dignis hic præſentibus, Ego Jacobus Colmer Collegii Exonienſis infrà Univerſitatem Oxon. A. M. Dico, allego & in his ſcriptis animo appellandi deq; Nullitatibus, iniquitatibus & injuſtitiis omnibus & ſingulis infrà ſcriptis æquè principaliter querelando omnibus melioribus viâ, modo & juris formâ quibus poſſim efficaciùs aut debeo, & ad omnem & quemcunque juris effectum exindè quoviſmodo ſequi valentem, Quod licet inter cætera In Statutis Collegii Exonienſis prædicti ſpecialiter Statutum, proviſum & ordinatum eſt in Rubricâ De Cauſis propter quas Scholares privari debeant in hâc quæ ſequitur verborum formâ aut conſimili in effectu, viz.* [*Quod ſi quis Scholarium vel Electorum, Adulterii, Incontinentiæ, Hæreſis pertinacis, Homicidii voluntarii, Perjurii manifeſti, crebræ Ebrietatis, alteriuſve Publicæ Turpitudinis coram Rectore, Sub-Rectore, Decano & quinque aliis Scholaribus maxime Senioribus vel majore parte eorundem, cum dicti Rectoris conſenſu, Legitime Convictus fuerit ipſum, perpetuo Excluſum & privatum ipſo facto à Dicto Collegio nullâ aliâ monitione præmiſsâ virtute præſentis Statuti decernimus.*] *Nihilominus Arthurus Bury*, S. T. P. *& Collegii Exonienſis ſuprà dicti Rector*, Georgius Verman, *S. T. Bacc. Sub-Rector*, Ezra Cleaveland, *A. M. Decanus*, Thomas Lethbridge, *S. T. B.* Richardus Hutchins, *S. T. B.* Benjaminus Archer, *S.T.B.* Samuel Adams, *A. M.* Philippus Thorn, *A.M. quinque ſocii maxime Seniores in dicto Collegio aut eorum ſaltem pars major, in omnibus minus juſtè, nulliter, & iniquè (eorum Reverentiâ ſemper ſalvâ) procedentes, objecto mihi Incontinentiæ Reatu cum quadam Annâ——ancillâ nuper puerpera nullis autem editis deſuper Probationibus ſaltem legitimis aut de jure ſufficientibus de facto quantum in illis fuit cum de jure non potuerint, me* Jacobum Colmer *nullatenus legitimè] Convictum à Dicto Collegio excluſerunt & amoverunt. Unde ego antedictus* Jacobus Colmer, *Sentiens me ex præmiſſis nullitatibus & injuſtitiis enormiter læsi & prægravari ab eiſdem & eorum quolibet ad Reverendiſſimum in Chriſto Patrem ac Dominum, Dominum* Jonathanem *Divinâ per-*

missione Exoniensem Episcopum & Collegii Exoniensis memorati Visitatorem Legitimum Appello, ac jus & justitiam peto; protestando quod libenter appellassem, in præsentiâ dicti Rectoris, Sub-Rectoris, Decani & quinque Sociorum prædictorum maximè Seniorum, si hoc commodè facere potuissem; protestorq; insuper de emendando, corrigendo, & reformando hanc meam Appellationem & Querelam juxtà Juris-peritorum consilia, prout Moris est & Juris: Super quibus peto Instrumentum publicum mihi confici.

Lecta Hæc Appellatio in præsentia,
Tho. Wood.
Ard. Adderley.

Lecta erat retrò scripta Appellatio per Magistrum Jacobum Colmer A. M. in Cubiculo Magistri Thomæ Wood L. L. Bacc. apud Collegium Novum in Universitate Oxon 24 Die Octobris inter horas Secundam & Tertiam pomerid. Anno Domini 1689. coram me Roberto Loggan Notario Publico ac testibus ad hoc specialiter rogatis & requisitis

Ità Testor

Robertus Loggan Notarius Publicus Auctoritate Regiâ ad hoc specialiter rogatus & requisitus.

Exhibit' &c. 25 die Martii 1690. per *Thomam Wood* L L. Bac. in Visitatione per Venerabilem Virum *Edvard. Master* L L. Doctorem Domini Episcopi Exon. Commissarium habita pro Copia vera In præsentia mei

Ben. Cooper Notarii Publici.

In

In Visitatione Colleg. *Exon.* 25to die Martii, An. Dom. 1690. Per Venerabilem Virum D. *Edvardum Master*, L. L. Doctorem, Reverendi admodum in Christo Patris Domini *Jonathanis Exon* Episcopi, ejusdem Coll. Visitatoris Commissarium habitâ, Ad Appellationem *Jacobi Colmer*, A. M. Collegii prædicti nuper Scholaris Responsio, sive Protestatio *Arthuri Bury* ejusdem Collegii Rectoris, & septem Scholarium maxime Seniorum aut saltem majoris partis eorundem.

NOS *Rector & Scholares prædicti ad Libertates Collegii nostri pro Viribus defendendas juramento obligati Protestamur non licere Nobis præfato Reverendo Visitatoris Commissario è Tribunali illud exigenti amotionis Magistri* Colmer *rationem reddere, idque ob has potissimum rationes.*

I. *Quia per juramentum à quolibet Scholari in Admissione suâ præstitum Cavetur ne quis Appellationem ullam faciat, si per Rectorem, aut in hujusmodi interesse habentes amoveatur.*

II. *Quia istæc Appellatio facta est ad Judicem non competentem, Cum per Statuta nostra in qualibet lite inter Rectorem & Socios, ubi querelæ locus fuerit, Sententiæ & Judicio D. Cancellarii* Oxonienſis, *si in Universitate tunc fuerit, & illo absente, Vicecancellarii parendum sit. Et secundum eam formam Lites per Vicecancellarium, non autem per Episcopum* Exon. *terminatas fuisse è Registro nostro patet.*

Protestamur insuper Visitationem sub istiusmodi formâ, quâ nunc proceditur, procedere non oportere; scilicet, apertis foribus, admissa turbâ cæteroque cum strepitu judiciali.

I. *Quia ideo potestas Visitandi conceditur, ut liceat Reverendo Visitatori, aut ejus Commissario, de delictis inquirere, eademque corrigere: non autem liceat cuiquam qui accusatus vel detectus fuerit, petere ut Copia compertorum, vel Nomina detegentium sibi exponantur; sed statim personaliter Respondere & Correctionem subire omnes delinquentes tenentur.*

II. *Cavetur nè sumptus Visitationis summam adeo exiguam excedat ut Officiariis inde pro laboribus suis compensatio exhiberi non possit.*

III. *Quia non Sententiâ è Tribunali latâ, sed post finitam Visitationem scriptis Rectori traditis, & nè id quidem, nisi cum præ brevitate temporum Correctio ore tenus fieri non potest, Corrigenda Rectori demandantur.*

Supplicamus proinde Venerabili Commissario, ne in futuris Visitationibus adeo publicè procedatur, neo in præsenti quicquam Statuatur in hac Causa Appellationis, Protestantes irritum fore quicquid contra Acta nostra Statutum fuerit.

Concordat cum Originali factâ debitâ Collatione, per me *Ben. Cooper*, Notar. Publ.

A. Bury, *Rector.*
Geo. Verman, *Sub-Rector.*
Tho. Lethbridge.
Ben. Archer.
Sam. Adams.
Phil. Thorne.

Die *Martis* 25. viz. Die Mensis *Martii*, Anno Domini 1690. inter horas secundam & quintam pomeridianas ejusdem diei, in Camera communi Collegii *Exon.* coram Venerabili Viro *Edvardo Master*, L. L. Doctore, *&c.* Reverendus Vir *Arthurus Bury*, Sacræ Theologiæ Professor. & Collegii prædicti Rector, Protestationem pagina superiori descriptam recitavit, & nomine tam suo quàm eorum Scholarium, quorum Nomina subscripta sunt admitti petiit, eandemque præfatus *Edvardus Master* admisit, & Actorum in hac parte scribæ custodiendam tradidit.

In præsentia mei,

Ben. Cooper, Not. Publ.

Salvâ

Salvâ Proteſtatione noſtrâ nos Rector & Scholares Collegii *Exonienſis* è ſeptem Senioribus pars major *Jacobum Colmer*, A. M. incontinentiæ legitimè convictum his præcipuè probationibus cenſuimus.

I. PRædictum *Magiſtrum* Colmer *diverſarum Puellarum pudicitias attentaſſe comperimus.*

II. *Quod* A. Sparrow *nondum imprægnationis ſuſpecta queſta ſit, ſe à Magiſtro* Colmer *perditam, quod debito inde intervallo, appropinquante puerperio, profeſſa ſit, ſe ab eodem imprægnatam à diverſis teſtibus indicatum; quæ teſtimonia per coincidentiam ſe mutuo ita confirmarunt, ut de veritate dubitandum non videretur.*

Cùm prædicto Magiſtro Colmer *dies dictus eſſet,* A. Sparrow *nondum ſatis valida, abſcondita eſt, ne ex ejus examinatione eliceretur Veritas.*

Poſt latam Sententiam Magiſter Colmer *profeſſus eſt non habere ſe quod de Judicibus ſuis quereretur; ſe enim ex eiſdem teſtimoniis quemlibet alium condemnaturum, ſed in teſtes totam culpam rejecit.*

Tandem A. Sparrow *mirâ providentiâ* Londini *reperta, & per Juramentum examinata, dixit ſe ab omnibus aliis viris incorruptam, à ſolo Magiſtro* Colmer *compreſſam & imprægnatam.*

In

In Visitatione Collegii Exon 22°. die Martii An. Dom. 16[illegible]. Per Venerabilem virum D. Edv. Master L L. Doctorem Reverendi admodum in Christo Patris Jonathanis Exon. Episcopi ejusdem Collegii Visitatoris Commissarium habitâ ad Appellationem Jacobi Colmer A. M. Responsio & Protestatio Arth. Bury S. T. P. ejusdem Collegii Rectoris & Septem è Scholaribus maximè Senioribus aut saltem majoris partis eorundem domi existentium.

NOS Rector & Scholares prædicti ad Libertatem hujus Collegii pro Viribus nostris defendendam juramento obligati, Protestamur, non licere Nobis de Expulsione prædicti Magistri Colmer rationem præfato Reverendi Patris prædicti Commissario reddere ob rationes sequentes.

I. *Per juramentum ab omnibus Scholaribus in Admissione suâ præstitum Cavetur ne quam Appellationem aut Querelam faciat si per Rectorem aut in ejusmodi interesse habentes expellatur. Quumque Rector eidem juramento teneatur, irrita Statuitur omnimoda illius Appellatio.*

II. *Quia in Statutis nostris Legitima Causa idem significat ac Rationabilis Causa, & penes Nos est judicare quæ nam Causa pro tali habenda sit, ut patet è Rubrica de Ordinationibus legendis cum alia Rubrica de qualitate, & Officio Rectoris collatâ.*

III. *Quia alius querelarum Arbiter Statuitur, nempe D. Cancellarius Universitatis Oxon. si in Universitate tunc fuerit, & illo absente Vice-Cancellarius, ut ex juramento Rectoris patet.*

IV. *Quia post latam Sententiam Mr. Colmer confessus est, se ex eisdem probationibus judicaturum fuisse quemlibet alium satis convictum; & licentiam à Rectore petiit ut in aliud Collegium admitteretur.*

Proinde humiliter à Venerabili Commissario petimus, ut ad alia Visitationis negotia procedat, relictis Nobis Privilegiis nostris hac ex parte intemeratis.

A. Bury *Rector.*
Geo. Verman *Sub Rector.*
Tho. Lethbridge.
Phil. Thorne.

In

A Proteſtation of the *Rector* and *Senior Fellows*, againſt the *Biſhop*'s Viſitation.

IN Dei nomine, Amen. *Coram vobis Reverendo in Chriſto Patre ac Domino, Domino* Jonathan' *permiſſione Divina* Exon' *Epiſcopo, ac Patrono & Viſitatori Collegii* Exon' *infra Univerſitatem* Oxon *Nos Rector & Scholares Collegii* Exon. *prædict' cum omni qua debet Reverentia dicimus, allegamus & in his Scriptis ad omnem Juris effectum qui exinde ſequi poteſt aut poterit, atque omnibus via, modo & jure forma melioribus quibus melius & efficacius de jure poſſumus & debemus animo Proteſtandi proponimus. Quod cum per Literas Veſtras Citatoriales geren. Dat. decimo ſexto dei Menſis* Maii, Anno Domini 1690. *Nobis intimari feceritis, Quod Vos Collegium hoc decimo ſexto Die Inſtantis Menſis* Junii *inter Horas nonam & undecimam antemeridianas ejuſdem diei Viſitare decreveritis in hunc tenorem; viz.* Jonathan *Providentiâ Divinâ* Exon. *Epiſcopus Collegii Exonienſis in Academia* Oxon. *Patronus & Viſitator, Dilectis Nobis in Chriſto Venerabili Viro* Arthuro Bury, *Sacræ Theologiæ Profeſſori, Collegii Exonienſis in Academia Oxonienſi prædict' Rectori, & ejuſdem Collegii Subrectori pro tempore exiſtenti Salutem, Gratiam & Benedictionem. Quum Nos pro debita Statutorum dicti Collegii Obſervatione, Ad honorem Dei, & animarum Salutem Collegium prædictum (favente Deo) propediem Viſitare proponimus & intendimus: Vobis igitur conjunctim & diviſim committimus & firmiter injungendo Mandamus; Quatenus moneatis & citetis, ſeu moneri & citari faciatis peremptorie Omnes & Singulos dicti Collegii Socios, Scholares & Miniſtros quoſcunque quocunque nomine cenſeantur (quos Nos etiam tenore præſentium ſic monemus) Quod ipſi cum vobis compareant, & quilibet eorum compareat coram Nobis, aut Vicario noſtro in Spiritualibus Generali ſive Commiſſario vel Commiſſariis noſtris, In Capella dicti Collegii Die Lunæ, viz. Decimo Sexto Die Menſis* Junii *prox. futur. inter horas nonam & undecimam antemeridianas ejuſdem diei, Viſitationem noſtram hujuſmodi ſubitur' & juri per omnia paritur. Et quid in præmiſſis feceritis Nos dictis Die & loco una cum præſentibus debite Certificetis. In Cujus rei teſtimonium ſigillum noſtrum Epiſcopale præſentibus apponi fecimus. Dat. in Palatio noſtro Exon. decimo ſexto die Menſis* Maii, Anno Dom. 1690. *Noſtræque Conſecrationis Anno quinto, & Tranſlationis Secundo.*

Cumque vi cujuſdam Commiſſionis Venerabili Viro Edvardo Maſter, *L. L. Doctori Commiſſario Veſtro in hac parte conſtituto conceſſæ, prædictus* Edvardus Maſter *die* Martii *Vicеſimo ſecundo proximè Elapſ. ad Collegium Exon. prædict. acceſſerit, idemque Viſitaverit; cumque per Statuta hujus*

Liceat

Collegii Exon prædict. ad quæ observanda juramento astringimur Liceat Domino Episcopo Exoniensi qui pro tempore fuerit, & nulli alii, nec aliis, quoties per Rectorem dicti Collegii, & in ejus absentia Subrectorem & quatuor alios ad minus ex septem maximè Senioribus Scholaribus fuerit requisitus; nec non absque requisitione ulla de quinquennio in quinquennium, Semel, *ad dictum Collegium per se, vel per suum Commissarium, quem duxerit deputandum liberè accedere, &c. nec aliter neque alio modo. Cumque Spatium quinquennii minimè affluxerit, juxta Statuta prædicta, citra Visitationem (ut præfertur) in hoc Collegio Oxoniensi per dictum Venerabilem Virum* Edvardum Master *Commissarium Vestrum in hac parte constitutum, obitam. Quamobrem primo & ante omnia protestamur de non consentiendo in Vestram Visitationem, (Reverende Pater ac Domine) nobis, sic ut præfertur, intimatam, hac sola ratione ducti, ne quid fiat, quantum in Nobis est, in præjudicium Libertatum, Jurium, Privilegiorum & Statutorum dicti Collegii, ad quæ omnia servanda juramenti Vinculo omnes & singuli tenemur. In cujus rei Testimonium Sigillum nostrum Commune præsentibus apposuimus. Datum decimo tertio Die Mensis* Junii, Anno Dom. 1690.

Concordat cum Originali facta debita Collatione, per Me

Ben. Cooper, Notarium publicum.

Die Lunæ 16. viz. Die Mensis Junii Anno Dom. 1690. Inter horas 10 & 11. antemeridianas ejusdem diei infra Collegium Exon. prædict. Coram Reverendo in Christo Patre ac Dom. Dom. Jonathan permissione Divinâ Exon. Episcopo ac ejusdem Collegii Patrono & Visitatore, Reverendus Vir Arthurus Bury S. Theol. Professor & Rector Collegii Exon. prædict. (unà cum Sociis dicti Collegii) cum omni quâ debuit Reverentiâ comparuit; & eidem Reverendo in Christo Patri Protestationem supra scriptam Rectoris & Scholarium Coll. Exon. prædict. in Pergamenâ exaratam, & communi Sigillo dicti Collegii sigillatam, contra prætensam Visitationem Reverendi Patris prædict. nuper eis intimatam, præsentavit; sed Domino Episcopo Exon. dictam Protestationem admittere recusante, præfatus Reverendus Vir Dr. Bury dictam Protestationem mihi Ben. Cooper Notario Publico palam legendam tradidit, quam Dominus Episcopus Exon. è manibus meis inter legendum eripuit, quo minus dictam Protestationem perlegere potuerim.

Acta fuerunt hæc omnia prout suprascribuntur,
In presentia Mei

Ben. Cooper, Notarii Publici.

IN

In Dei nomine Amen. *Coram vobis Reverendo in Chriſto Patre ac Dom. Dom.* **Jonathan** *permiſſione Divinâ* Exon *Epiſcopo ac Patrono & Viſitatore* Collegii Exon *infra Vniverſitatem* Oxon. *Nos* Rector *& Scholares* Collegii Exon *prædict. cum omni quâ debet Reverentia dicimus allegamus & his Scriptis ad omnem juris effectum qui exinde ſequi poteſt aut poterit, atque omnibus viâ modo & juris formâ melioribus quibus melius & efficacius de jure poſſumus & debemus animo proteſtandi proponimus; Quod cum per Literas veſtras Citatoriales gerent. Dat. Viceſimo primo Die Menſis* Julii *Anno Dom. Milleſimo Sexenteſimo Nonageſimo, Nobis intimari feceritis quod Vos Collegium hoc Die Jovis,* viz. *Viceſimo Quarto Die inſtantis Menſis* Julii *inter horas* Septimam & Duodecimam *ante meridiem ejuſdem Dici Viſitare decreveritis in hunc tenorem* (viz.) **Jonathan** *permiſſione Divina Diæc'* Exon' *Epiſcopus & Collegii* Exon *in Univerſitate* Oxon' *Patronus, & Viſitator Ordinarius. Cum Nos Collegium* Exon' *prædict' die hor' & loco ſubſcript' juxta Statuta dict' Collegii (Deo favent' altiſſimo) tam in Capite quam in Membris Viſitare intenderimus & Statuerimus. Vobis igitur* Petro Cox & Andreæ Skinner *Litteratis Mandatar' noſtris a nobis in hac parte conſtitut' committimus ac firmiter injungendo mandamus quatenus Citetis ſeu citari faciatis peremptorie. Venerabilem Virum* Arthurum Bury *Sacræ Theologiæ Profeſſorem Collegii* Exon *prædict' Rectorem,* Georgium Verman, *Sacræ Theologiæ Bacc' Ejuſdem Collegii Sub-Rectorem,* Johannem Hearn, *Sacræ Theologiæ Profeſſorem,* Thomam Lethbridge, Ricardum Hutchins, & Benjaminum Archer, *Sacræ Theologiæ Bacc',* Samuelem Adams, Robertum Ratcliffe, Ezram Cleeveland, Gulielmum Read, Johannem Harris, Philippum Thorne, Jacobum Colmer, Johannem Bagnell, Henricum Maundrell, Johannem Crab, & Thomam Vivian, *in Artibus reſpectivè Magiſtros,* Johannem Bonamy, & Thomam Kingſton, *in Artibus Bacc',* Franciſcum Webber, Henricum Levett, Henricum Northcote, Henricum Huthnance *dicti Collegii* Exon' *reſpectivè Scholares,* Johannem Snell, *ejuſdem Collegii Electum,* Gulielmum Newe *Promum,* Richardum Hedges *Coquum,* Henricum Edwards *Obſonatorem,* & Richardum Parker, *Bibl. Lectorem dict' Collegii Miniſtros. Ac preterea famulos quoſcunq; ejuſdem Collegii perſonaliter ſi ita apprehendi ſeu citari poterint, alioquin per publicum Citationis Edictum preſentibus* (viz.) *ſuper valvis ſeu foribus exterioribus Collegii* Exon' *predict' affixis & ibidem aliquandiu dimiſſis & relictis aliiſque mediis viis ac modis quibuſcunq; legitimis ac de jure permiſſis ita quod Citatio hujuſmodi ad aures & notitiam eorum ſaltem de verifimili pervenire poterit. Quos Nos etiam tenore præſentium ſic citamus quod compareant & eorum quilibet compareat coram nobis in Aula communi dicti Collegii die Jovis* (viz.) *Viceſimo quarto die* Julii *prox' ſequen' inter horas*

septimam & Duodecimam ante Meridiem ejusdem Diei Visitationem nostram Ordinariam quam tunc & ibidem quoad eos celebrare & Exercere proponimus & intendimus juxta juris in ea parte exigentiam subitur' & ad Interrogatoria recipiend. iisdem respondend. ad Detegend' objici videnď ad probationes (si opus fuerit) de super fieri etiam videnď. ad defensiones si quas habuerint quatenus Statuta admittunt faciend. ad penas juxta cujusque demerita (si opus fuerit) infligi videnď singulis Deniq; Sessionibus ad interessend. dicta Visitatione nostrâ pendent. Ulteriusque *factur' & receptur' quod justum fuerit in hac parte.* Intimamus *in super omnibus & singulis superius Citatis, Quod sive ipsi seu eorum aliquis comparuerint sive non in præmissis procedere intendimus quatenus rerum ratio patiatur absentiis seu potius Contumaciis ipsorum sic (ut præmittitur) Citatorum & Intimatorum in aliquo non obstan. Et quid in præmissis feceritis nos dictis die horis & loco debite Certificetis Dat' sub Sigillo nostro Episcopali Vicesimo primo die Mensis* Julii *An. Dom. Millesimo Sexcentesimo Nonagesimo.*

Cumq; vi cujusdam Commissionis Venerabili Viro Edvardo Master *LL. Doctori Commissario vestro in hac parte Constituto concessæ, prædictus* Edvardus Master *die* Martii *Vicesimo secundo proximè elapsi ad Collegium* Exon' *prædict' accesserit idemq; visitaverit; Cumque per Statuta hujus Collegii* Exon' *prædict', ad quæ observanda juramento astringimur; Liceat Domino Episcopo* Exonien*si, qui pro tempore fuerit, & nulli alii, nec aliis, quoties per Rectorem dicti Collegii, & in ejus absentia Sub-Rectorem & quatuor alios ad minus ex septem maximè Senioribus* Scholaribus *fuerit requisitus, nec non absq; requisitione ullâ, de quinquennio in quinquennium, semel, ad dictum Collegium, per se, vel per suum Commissarium, quem duxerit deputandum, libere accedere, &c. nec aliter neque alio modo; cumque Spatium Quinquennii minimè effluxerit, juxta Statuta prædicta, citra Visitationem (ut præfertur) in hoc Collegio* Exonien*si per dictum Venerabilem Virum* Edvardum Master *Commissarium vestrum in hac parte constitutum, obitam; Quamobrem primo & ante omnia protestamur de non consentiendo in vestram Visitationem (Reverende Pater ac Domine) nobis sic (ut præfertur) intimatam, hac solâ ratione ducti, ne quid fiat, quantum in nobis est, in præjudicium Libertatum Jurium, Privilegiorum & Statutorum dicti Collegii, ad quæ omnia servanda Juramenti vinculo omnes & singuli tenemur. In cujus rei testimonium Sigillum nostrum commune præsentibus apposuimus. Datum Vicesimo tertio die Mensis* Julii *Anno Dom. Millesimo Sexcentesimo Nonagesimo.*

Concordat cum Originali facta debitâ Collatione per Me,
Ben. Cooper, Notarium Publicum.

The

The Anſwer of the Rector and Fellows of Exeter Colledge *in* Oxon *to the Petition of the Right Reverend Father in God* Jonathan *Lord Biſhop of* Exeter. *Exhibited to the King and Queens moſt Excellent Majeſties.*

THeſe Reſpondants do admit that the Biſhop of *Exeter* for the time being, is by the Statutes of the ſaid *Colledge* appointed Patron and Ordinary viſitor thereof, but theſe Reſpondents are adviſed and do inſiſt that the Viſitors power of Viſitation, or Exerciſing any Act of juriſdiction within the *Colledge*, is not general, nor as often as he pleaſe, but by the ſaid Statutes is reſtrained and limitted to be but once in five years, and not oftener, unleſs requeſted by the *Rector* or *Sub Rector*, and four of the ſeven *Senior Fellows*. And theſe Reſpondents further ſay, that a certain *Fellow* of that *Colledge* being proceeded againſt before the ſaid *Rector* and the ſeven *Senior Fellows* for incontinence, and for that crime upon conviction Expelled the *Colledge* in *October* laſt, purſuant to the power given to the *Rector* and ſaid *Fellows* for that purpoſe, by the Statutes of the ſaid *Colledge*, Dr. *Edward* Maſters Chancellor to the Biſhop of *Exeter*, by vertue of a Commiſſion or Power of the ſaid Lord Biſhop did in *March* laſt, come to the ſaid *Colledge*, and Exercifed Acts of Viſitation, and juriſdiction, relating to the ſaid *Colledge*, and the ſaid *Fellows* Expulſion confining himſelf to the time and Circumſtances preſcribed by the Statutes for Viſitation, and the ſaid *Fellows* name being by the aforeſaid Commiſſary inſerted into the *Colledge* Buttery-Book, and he claiming the priviledges of a *Fellow*, notwithſtanding ſuch his Expulſion. A freſh Complaint of the ſame crime of Incontinence with another Woman was made againſt him, and he Convicted thereof, and as a *pretended Fellow* again Expelled by the *Rector* and Major part of the *Senior Fellows* purſuant to the Statutes of the ſaid *Colledge*, whereupon application by the ſaid *Fellows* being again made to his Lordſhip, his Lordſhip was pleaſed by a Citation to ſignify his pleaſure that he intended to viſit the *Colledge*, and thereupon theſe Reſpondents being informed that his Lordſhip was come to *Oxford* for that purpoſe, humbly waited on him, to pay him the Reſpects of the *Colledge*, but withal ſignified to his Lordſhip that that intended Viſitation not being requeſted by the *Rector* or *Sub Rector* and four of the *Senior Fellows*, in regard of the above mentioned Viſitation in the Month of *March* precedeing was againſt the Statutes of the *Colledge*, and that therefore they could

not submit to it, but had drawn up a Protestation under the Common Seal of the *Colledge*, which Protestation was afterwards tendered to his Lordship and rejected by him, and these Respondents do beleive that their Chappel-Doors were kept Locked as they usually were at that time of the day, but these Respondents do deny that they intended any contempt or disobedience towards his Lordship, for whom they have a Dutiful regard as their Visitor, yet what was done by them was meerly and only by way of asserting their Legal Rights, and as they conceived and were advised in Observance of their Statutes to which they were all Sworn. The said *Rector* and *Fellows* do therefore humbly pray that under their Majesties gracious Protection, they may quietly enjoy the Rights and Priviledges which have been granted to them, by the gracious Charters of their Majesties Royal Predecessors.

At the Court of Whitehall the 25th. *of* June, 1690.

By the Right Honourable the Lords of their Majesties most Honourable Privy-Council.

IN *pursuance of an Order of the* 19th. *instant, the* Rector *and* Fellows *of* Exeter-Colledge *in* Oxon, *having this day presented to the Board, their Answer to the Petition of the Right Reverend Father in God* Jonathan *Lord Bishop of* Exeter, *and the same being read, it was thereupon ordered by their Lordships, that a Copy of the said Answer be given to the Lord Bishop of* Exeter, *and that the whole matter be heard at this Board on* Wednesday *the* 2d. *of* July *next, when the parties concerned are to give their attendance.*

Jo. Nicholas.

At the Court at Whitehal the 5th. *of* July, 1690.

By the Lords of their Majesties most Honourable Privy-Council.

THE *matter in difference between the Lord Bishop of* Exeter, *and the* Rector *and* Fellows *of* Exeter-Colledge, *upon the Petition of the said Lord Bishop, and Answer of the said* Rector *and* Fellows, *concerning a Visitation of the said* Colledge, *having according to Order of the* 26th.

of

of June *laſt, been this day heard at the Board, and Counſel learned having been heard on both ſides.*

It is Ordered in Council, that the ſame be Diſmiſt, as it is hereby Diſmiſt this Board accordingly.

William Blathwayt.

To the Queens moſt Excellent Majeſty.

The humble Petition of *Arthur Bury* Rector, Profeſſor in Divinity, *George Verman* Sub-Rector, B.D. *John Hern* Profeſſor in Divinity, *Thomas Lethbridge, Benjamin Archer, Samuel Adams* Bs. D. *Philip Thorn, John Crab, Thomas Vivian*, Maſter of Arts, *John Bonony, Tho. Kingſton* Batchelours of Arts, and *Henry Huthnance* Fellows of Exeter-Colledge in *Oxford*, and *John Vivian* Fellow Elect of the ſame.

Humbly ſheweth

THat Jonathan *Lord Biſhop of* Exeter *having given notice that he intended to Viſit the ſaid* Colledge *on the* 24th. *of* July *laſt three of the Fellows deputed by the* Rector *and Major part of the* Fellows *did on that day in the Morning, wait on the ſaid Biſhop to acquaint him that as they humbly conceived by the Statutes of their* Colledge, *his Lordſhip could not Viſit them at that time, being alſo the rather induced to believe themſelves not miſtaken in the ſence of the Statutes for that after a full hearing before your Majeſties Privy Council, upon that ſubject the ſaid Biſhops Petition had been lately diſmiſt. But his Lordſhip was pleaſed to ſend them word that tho he expected to meet with Oppoſition, yet he was reſolved to come, and a little after the return of the* Fellows, *the* Colledge gates *were broken open by force and violence, by thoſe that took upon them to oppoſe the Colledge to aſſiſt the Biſhops pretence, and a great multitude of rude People ruſhing in tore down and much abuſed the ſaid Rector and Fellows; By which means the ſaid Biſhop found an entrance into the Colledge, and went into the Hall, and did there hold a pretended Court or Aſſembly under colour of a Viſitation.* Whereupon *the ſaid Rector and major part of the Fellows came, and humbly tendred to his Lordſhip a Proteſtation under the Colledge Seal againſt his Proceedings, which they were not ſuffered to read out. The pretended Court being adjourned to the afternoon, eleven of the Fellows, being your Petitioners, amongſt whom are five of the ſeven Senior Fellows of the Colledge, and all the Officers of the Colledge had Sentence of Suſpenſion* ab Officio & Beneficio

ficio *pronounced against them, by or in the presence of the Bishop, and your Petitioner* Hernes *Fellowship was Unstatutably declared void, and your Petitioner* Thomas Kingston *was pronounced Excommunicated for having read Prayers in the Chappel after the pretended Suspension of him as Fellow, and the name of your Petitioner* John Vivian *was ordered to be left out of the Colledge Book as no Fellow: And although by the said Satutes the Rector of the said olledge, if accused of any the Crimes expressed in the said Statute is to be judged by the Visitor, and seven of the most senior Fellows, yet the said Bishop, attended with Seven others, amongst whom was one Mr.* Colmer, *who then stood expelled the said Colledge for Fornication, Two of the Seven (being the only real Seniors) dissenting, and the others being obnoxious) did pronounce Sentence of Expulsion against the said Rector for certain pretended Crimes, the particulars whereof your Petitioners cannot set forth, having not been able to obtain any authentick Copy of that or other the pretended Sentences or proceeding, tho they have endeavoured to procure the same, and the said Bishop did then also pronounce Sentence of Excommunication against the said* Rector, *in case he should not recede from the* Colledge, *and deliver up his Charge by the first of this instant* August, *nor were the Statutes of the* Colledge, *concerning the Expulsion of the* Rector, *observed in the said Proceedings.*

Now forasmuch as your Petitioners are advised that the said proceedings and Sentences, are irregular and not well founded, nor warranted in Law, nor justifyed by the Statutes of the Colledge. *Yet nevertheless by meanes thereof, and other the force and violent disturbances aforesaid your Petitioners are interrupted in their Rights, and the said* Colledge *put into extream confusion and disorder, to the great danger, if not of the utter ruin of the same, and the discipline of the Youth therein Educated, but also to the great disturbance of your Majesties peace and the quiet of the whole University.*

In tender consideration whereof, and for that your Petitioners are advised that it is their Duty humbly to represent the said proceedings to your Majesties, to whose Royal Pleasure and Prerogative, it appertains to Examine and Determine in matters of this nature,

Your Petitioners do therefore most humbly pray that your Majesty would be pleased to interpose your Royal Authority, to put some stop to those disorders, and to restore to your Petitioners, and the Colledge, *the Peace and Quiet they have before enjoyed, under your Majesties most happy Reign, and to grant your Petitioners such other Relief in the premises as to Justice and in your Majesties Royal Wisdom shall be thought meet*

And they shall Pray, &c.

A Copy of the Writ directed by the Court of *Kings Bench* to the *Biſhop of Exeter*, upon occaſion of the *Rector's Excommunication.*

GUlielmus & Maria *Dei Gratia* Angliæ & Scotiæ, Franciæ & Hiberniæ *Rex & Regina Fidei defenſores*, &c. *Reverendo in Chriſto Patri ac Domino Domino* Jonathano Exon' *Epiſcopo ſalutem cum oſtens eſt nobis in Curia noſtra coram nobis apud* Weſtm' *ex parte* Arthuri Bury *Sacræ Theologiæ Profeſſoris, quod cum Colleg'* Exon' *in Univerſitate* Oxon *eſt antiquum Collegium & ad ſuſtentation' unius Rector' & viginti & trium Scholarium in bonâ litteratur & liberis artibus proficient & ſtudioſor' ibidem confluend' in eiſdem inſtruend' & erudiend'* totum in temporalibus & nichil in ſpiritualibus fundat' & de laica fundatione exiſt'. *Cumque vos præfat' Epiſcopus qui Viſitator eſſe & quinquennem habere Viſitation' ejuſdem Collegii clamat' in Viſitation' veſtram ſeu aliter nullam habetis* Spiritualem Juriſdictionem *de in vel ſuper Rector' ſive aliquem vel aliquos Scholar' ejuſdem Collegii ſeu de in vel concernent. eliqua materia clauſa ſive re tangent' ſeu ſpectant ad idem Collegium neque eoſdem Rector' & Scholar' ſeu eorum aliquos ſive aliquem* per Eccleſiaſticas Cenſur' in aliquo compellere debeatis *ſeu unquam hactenus conſueviſtis ac licet prædict' Collegium* Exon' *in Univerſitat'* Oxon' *& Rector' & Scholar' ejuſdem ſunt & ſemper fuiſſent* extra Dioceſ. veſtram & omnem Epiſcopal' & Eccleſiaſtic. Juriſdictionem veſtram. *Tamen vos Epiſcopus* Exon' *permiſſor' non ignar' machinant. & intendent. eund'* Arthurum Bury, *qui ad officium Rectoris Collegii præd' rite & legitime elect' & in eod' collocat' & præfect' fuiſſet*, contra debitam legis hujus regni Angliæ formam per Eccleſiaſticas Cenſur' prægravare opprimere & fatigare necnon nos exheredare cognitionemq; materiæ mere laicæ & quæ ad temporal' cognition' ſpectat & pertinet ad aliud examen in Cur' Chriſtianitatis trahere, ipſum Arthurum in Curia Chriſtianitatis coram vobis pretextu Viſitation' veſtr' ejuſdem Collegii traxiſtis in placit' *& in ipſum* Arthurum *pretextu contumaciæ in non parendo mandat' veſtris in dict' Viſitatione veſtr' ſententiam excommunication' fulminaveritis & ei diverſa gravam' & oppreſſion' per citation' & al' cenſur' Eccleſiaſticas ex cauſa prædict' diverſi modo intuleritis & in dies inferre intulitis*, In leſion' Coron' & dignitat' noſtrar' *ac præfat'* Arthuri *dammum non modicum & gravamen & prejudicium manifeſt' ac* contra formam legis terræ hujus regni noſtræ Angliæ, *Nos jura dictæ coronæ noſtræ ac legem & conſuetud'*

ſuper-

perdict' prout per vinculum Juram astringimur manutenere volent nostrosque ligeos suspencion' contra easdem violari nolent, vobis mandamus ac firmiter injungendo prohibemus ne placit' coram vobis versus prædict' Arthurum *super permiss. teneatis, nec quicquam in ea parte* per Censuras Ecclesiasticas attentari presumatis *seu per alios attentari faciatis quæ in ipsius* Arthuri *ac in nostri damn' & prejudicium seu legum & consuetudinem regni nostri Angli derogation' sive contempt' cedere valeat quoviscunq; do, & omnia quæ per vos in ea parte minus rite attent' fuerint sine dilatione revocari faciatis sub violator' legum nostarum penam periculo incurrendi, Ipsumq;* Arthurum *si quam sentent' in eum ea occasione fulumina veritis penit. absolvatis ab eadem,* &c. J. Holt *mil. apud* Westm' xxviii. *die* Novembris, *Anno regni nostri secundo.*

Edward Jevon of *London,* Gent. maketh Oath, That he this Deponent did on the ninth day of this Instant *December* 1690. serve the now Bishop of *Exeter* with their Majesties Writ of Prohibition by leaving with him the said Writ under the Seal of Their Majesties Court of *Kings-Bench* a Copy of which Writ is above written.

Jur' 22. die Decemb. 1690. Coram *Edw. Jevon.*

The same Writ was served at the Suit of Sir *K. mutatis mutandis.*

FINIS.

At the Court at Whitehal the 15th. *of* Auguſt, 1690.

Preſent : The Queens moſt Excellent Majeſty in Council.

WHereas *it hath been Repreſented to Her Majeſty in Council, that there hath lately happened a diſturbance in* Exeter-Colledge *in* Oxford *which may endanger the Peace in the Univerſity ; Her Majeſty in Council, is pleaſed to order that Doctor* Jonathan Edwards, *Vice-Chancellor of the ſaid Vniverſity, do take ſpecial care for keeping of the Peace in the ſaid Univerſity, and particularly in that Colledge.*

Rich. Colinge.

At the Court at Whitehal the 15th. *of* Auguſt, 1690.

Preſent: The Queens moſt Excellent Majeſty in Council.

UPon *Reading the Petition of* Arthur Bury *Rector, Profeſſor in Divinity,* George Verman, *Sub-Rector* , John Hern, Thomas Lethbridge, Benjamin Archer, Samuel Adams, Philip Thorn, John Crab, Thomas Vivian , John Bonany , Thomas Kingſton , *and* Henry Huthnance *Fellows of Exeter-Colledge in* Oxford, *and* John Vivian *Fellow Elect of the ſame, concerning ſome proceedings and ſentences of the Right Reverend Father in God* Jonathan *Lord Biſhop of* Exeter *relating to the ſaid* Colledge ; *It is this day ordered by Her Majeſty in Council, that the Lord Biſhop of* Exeter *do return his Anſwer in writing to this Board to the ſaid* Petition *annext, with all convedient ſpeed. Whereupon this Board will appoint a day for the hearing thereof.*

Rich. Colinge.

A Copy of the Writ directed by the Court of *Kings Bench* to the *Biſhop of Exeter*, upon occaſion of the *Rector's Excommunication.*

GUlielmus & Maria *Dei Gratia* Angliæ, Scotiæ, Franciæ & Hiberniæ *Rex & Regina Fidei defenſores*, &c. *Reverendo in Chriſto Patri ac Domino Domino* Jonathano Exon' *Epiſcopo ſalutem cum oſtens' eſt nobis in Curia noſtra coram nobis apud* Weſtm' *ex parte* Arthuri Bury

Sacræ Theologiæ Professoris, quod cum Colleg' Exon' *in Universitate* Oxon' *est antiquum Collegium & ad sustentation unius Rector' & viginti & trium Scholarium in bonâ litteratur' & liberis artibus proficiend' & studios' ibidem constituend' in eisdem instruend' & erudiend'* totum in temporalibus & nichil in spiritualibus fundat' & de laica fundatione exist'. *Cumque vos præfat' Episcopus qui Visitator esse & quinquennem habere Visitation' ejusdem Collegii clamat' in Visitation' vestra, seu aliter nullam habetis* Spiritualem Jurisdictionem *de in vel super Rector' sive aliquem vel aliquos Scholar' ejusdem Collegii, seu de in vel concernent. aliqua materia clausa sive re tangent' seu spectant ad idem Collegium neque eosdem Rector' & Scholar' seu eorum aliquos sive aliquem* per Ecclesiasticas Censur' in aliquo compellere debeatis *seu unquam hactenus consuevistis, ac licet prædict' Collegium* Exon' *in Universitat'* Oxon' *& Rector' & Scholar' ejusdem sunt & semper fuissent* extra Dioces'. vestram & omnem Episcopal' & Ecclesiastic. Jurisdictionem vestram. *Tamen vos Episcopus* Exon' *permissor' non ignar' machinant. & intendent. eund'* Arthurum Bury, *qui ad officium Rectoris Collegii præd' rite & legitime elect' & in eod' collocat' & præfect' fuisset,* contra debitam legis hujus regni Angliæ formam per Ecclesiasticas Censur' prægravare opprimere & fatigare, necnon nos exheredare cognitionemq; materiæ mere laicæ & quæ ad temporal' cognition' spectat & pertinet ad aliud examen in Cur' Christianitatis trahere, ipsum Arthurum in Curia Christianitatis coram vobis pretextu Visitation' vestr' ejusdem Collegii traxistis in placit' *& in ipsum* Arthurum *pretextu contumaciæ in non parendo mandat' vestris in dict' Visitatione vestr' sententiam excommunication' fulminaveritis & ei diversa gravam' & oppression' per citation' & ali' censur' Ecclesiasticas ex causa prædict' diversi modo intuleritis & in dies inferre intulitis,* In lesion' Coron' & dignitat' nostrar' *ac præfat'* Arthuri *damnum non modicum & gravamen & prejudicium manifest ac* contra formam legis terræ hujus regni nostræ Angliæ, *Nos jura dictæ coronæ nostræ ac legem & consuetud' superdict' prout per vinculum Juram' astringimur, manutenere volent' nostrasque ligeos suspencion' contra easdem violari volent', vobis mandamus ac firmit' injungendo prohibemus ne placit' coram vobis versus prædict'* Arthurum *super permiss. teneatis, nec quicquam in ea parte* per Censuras Ecclesiasticas attentari presumatis *seu per alios attentari faciatis quæ in ipsius* Arthuri *ac in nostri damn' & prejudicium seu legum & consuetudinum regni nostri Angliæ derogation' sive contempt' cedere valeat quovismodo, & omnia quæ per vos in ea parte minus rite attent' fuerint sine dilatione revocari faciatis sub violator' legum nostrarum penam periculo incurrentur, ipsumq;* Arthurum *si quam sentent' in eum ea occasione fulminaveritis penit.*

sit. absolvatis ab eadem, Teste J. Holt *mil. apud* Westm' xxviii. *die* Novembris, *Anno regni nostri secundo.*

Edward Jevon of *London*, Gent. maketh Oath, That he this Deponent did on the ninth day of this Instant *December* 1690. serve the now Bishop of *Exeter* with their Majesties Writ of Prohibition by leaving with him the said Writ under the Seal of Their Majesties Court of *Kings-Bench*: A Copy of which Writ is above written.

The same Writ was served at the Suit of Sir *K. mutatis mutandis.*

Jur' 22. die Decemb. 1690. Coram

Edw. Jevon.

POSTSCRIPT.

SInce these Papers were finished, Mr. *Painter*, the *new pretended Rector* and his party, have set on foot another practice, as little warranted by the *Statutes* of the *Colledge*, as the rest of the proceedings above mentioned: They have assum'd a power to themselves of Electing *New Officers* out of their own party in the room of the old ones, whom the *Visitor* had as Arbitrarily suspended, and with the assistance of the Youth of the *Colledge* have placed these *New Officers* by force and violence both in the *Hall* and the *Chappel*, and that whilest the matter of Right is depending judicially before a proper Court, and at their own Suit; and they dare to confront the Court of *Kings-Bench*, which has already declared the pretended Sentence of *Excommunication* against the *Rector* to be null and void, by opposing forcibly his entrance into the *Chappel* under the pretence of his being an *Excommunicated* person.

The particulars of these disorders are not here intended to be made publick; but their unstatutable proceeding in chusing *New Officers* as aforesaid, must be taken notice of, and the Authors of these confusions put in mind of the Statutes, which they seem to have forgotten.

It is provided by the Statute *De Electione Subrectoris & Decani*, &c. that their Election shall be, *Tricesimo die Junii annuatim modo & formâ subsequentibus, videlicet quod convocatis per Rectorem quinque maximè senioribus scholaribus perpetuis tunc in Universitate præsentibus, inquirat dictus Rector palam ac publicè suffragia singulorum, quibus suum duplex suffragium addat, & ille Subrector habeatur, in quem plura suffragia prædictorum con-*

ecclesiarum. Quæ similiter forma aliarum Decani semper observetur. So that by the Statute the *Election* is appointed to be upon a certain day of the year, *viz.* on the 30*th.* of *June*; and so strict was the *Colledge* formerly in observing their *Statutes*, and of their *Oaths*, that they conceiv'd a just doubt whether or no in any case whatsoever they could proceed to an Election upon any other day: And therefore they proposed it as a question to their *Visitor* in *Queen Elizabeth*'s time, *Si forte Subrector, Decanus*, &c. *Quoquo tempore ante Crastinum Petri fato vel sodalitio cesserit, vel amotus fuerit a Collegio, quum ipso crastino Petri nec aliis prædictorum Electiones fieri Statuta præscribant, quid interim faciendum?* To which the Answer is, *Quum quid tale evenerit, alius idoneus in cedentis vel amoti officium vacuum a solitis Electoribus juxta Statuta intrà septem dies usque ad crastinum Petri sequentis, nec ultrà ex ea Electione substituatur & eligatur.* By this Question and Answer it appears that the *Colledge* in those days had not the least apprehension of an Officer's place becoming void otherwise than by *Death*, *Cession* or *Expulsion*; and none of the *Officers* are either *dead*, or have made a *Cession*, or are *Expell'd*: Suspended *taliter qualiter* they are. But as the *Statutes* do no where warrant any such thing; so if they did, there could be no ground to chuse new ones in their room, because new ones are not to be chosen but in one of the three cases aforementioned; and if *Suspension* did warrant a new Election, it ought to be made within seven days after the Suspension: so that all's wrong. Nor can any pretence of necessity justifie what's done; for if there be any such necessity, it's a necessity that their own illegal and unstatuable procedeings have occasion'd.

FINIS.

ERRATA.

Pag. 4. lin. 31. leg. *Gigger*, Pag. 7. lin. 30. leg. *before*. Pag. 15. lin. leg. *Summarii*. Pag. 22. lin. 17. dele *Senior*. Pag. 22. lin. 11. leg. *own*. Pag. 24. lin. 28. leg. *exercebo*. Pag. 25. lin. 38, & 39. leg. *inquietabo*. Pag. 32. lin. 17. leg. *minis*. Pag. 36. lin. 4. *dele* Senior. Pag. 89. del. *Senior*. Pag. 64. lin 8. leg. *affuerit* ibid. lin. 6. leg. *Exclusis*. Pag. 67. lin. 30. for *Pellops* leg. *Pellop*. Pag. 69. lin. 28. leg. *hæc*.